Administration, 12 New England Executive Park, Burlington, MA 01803.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ANE–35.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter VOR Federal Airways V–99, V–451 and Jet Route J–62. Specific portions of each of the airways and jet route are no longer necessary for navigation and would be revoked. The airspace designation for V–99 would be revoked between Hartford, CT, and the GRAYM intersection; V–451 would be revoked between Groton, CT, and the SEEDY intersection; and J–62 would be revoked east of the Nantucket, CT, Very High Frequency Omnidirectional Range (VOR). Removing the obsolete segments would eliminate clutter on the aeronautical charts. Jet Routes and Domestic VOR Federal airways are published in paragraphs 2004 and 6010(a), respectively, of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The jet route and airways listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 2004–Jet Routes

* * * * *

J–62 [Revised]

From Robbinsville, NJ; to Nantucket, MA.

* * * * *

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–99 [Revised]

From LaGuardia, NY, via INT LaGuardia 043° and Hartford, CT, 245° radials; Hartford.

* * * * *

V–451 [Revised]

From LaGuardia, NY; INT LaGuardia 063° and Hampton, NY, 289° radials; INT Hampton 289° and Calverton, NY, 044° radials; INT Calverton 044° and Groton, CT, 243° radials; Groton.

* * * * *

Issued in Washington, DC, on December 12, 1995.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–31100 Filed 12–20–95; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Rregulatory Commission

18 CFR Part 37

[Docket No. RM95–9–000]

Real-Time Information Networks and Standards of Conduct; Notice of Proposed Rulemaking

December 13, 1995

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission proposes to amend its regulations to add Part 37 containing rules establishing and governing real-time information networks (RINs) and prescribing standards of conduct. Under this proposal, each public utility (or its agent) that owns and/or controls facilities used for the transmission of electric energy in interstate commerce would be required to create and/or participate in a RIN that would provide wholesale transmission customers and potential wholesale transmission customers with electronically provided information on available wholesale transmission capacity, prices, and other information that will enable them to obtain open access non-discriminatory transmission service.

DATES: Written comments (an original and 14 paper copies and one copy on a computer diskette) must be received by the Commission by February 5, 1996.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (202) 208–1283

William C. Booth (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, NE. , Washington, DC 20426 (202) 208–0849

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE. , Washington, DC 20426 (202) 208–0321

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS indefinitely in ASCII and Wordperfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

Real-time Information Networks and Standards of Conduct, Docket No. RM95–9–000, Notice of Proposed Rulemaking Table of Contents.

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend 18 CFR to add Part 37 containing rules establishing and governing real-time information networks (RINs) and standards of conduct. We are issuing this notice of proposed rulemaking in conjunction with our previously proposed Open Access rule.[1]

Under the proposed Open Access rule, public utilities that own and/or control facilities used for the transmission of electric energy in interstate commerce would be required to provide open access, non-discriminatory wholesale transmission services. To ensure non-discriminatory service, the proposed Open Access rule requires the functional unbundling of wholesale services. A public utility's uses of its own transmission system for the purpose of engaging in wholesale sales and purchases of electric energy must be separated from other activities and transmission services (including ancillary services) must be taken under filed transmission tariffs of general applicability.

To ensure this separation of service, the public utility must provide customers with timely access to transmission-related information. As we stated in the Open Access NOPR, ''functional unbundling means that the public utility, in order to provide non-discriminatory open access to transmission and ancillary services information, must rely upon the same electronic network that its transmission customers rely upon to obtain transmission information about its

[1] *See* Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Notice and Supplemental Notice of Proposed Rulemaking, 60 FR 17662 (April 7, 1995), IV FERC Stats. & Regs. ¶ 32,514 (March 29, 1995) (hereinafter Open Access NOPR).

system when buying or selling power.''[2] The rule we propose today is designed to begin the process of achieving this objective.

Under the proposed rule, each public utility as defined in section 201(e) of the Federal Power Act, 16 U.S.C. 824(e) (1994), (or its agent) that owns and/or controls facilities used for the transmission of electric energy in interstate commerce would be required to develop and/or participate in a RIN. The proposed regulations, relying heavily on work already done by representatives of all segments of the electric power industry, describe what information must be provided on the RIN and how RINs are to be implemented and used.

The Commission also proposes a code of conduct that would apply to all public utility transmission providers. This code of conduct would require, among other matters, a separation of the utilities' transmission system operations and wholesale marketing functions, and would define permissible and impermissible contacts between employees that conduct wholesale generation marketing functions and employees that handle transmission system operations and reliability in the system control center or at other facilities or locations.

Within 60 days of publication of a final rule in the Federal Register, public utilities would be required to file with the Commission procedures that would enable customers and the Commission to determine that public utilities are in compliance with the RINs and code of conduct requirements.

II. Public Reporting Burden

The proposed rule would require transmission providers to establish and/or participate in a RIN, which would provide wholesale transmission users and potential wholesale transmission users with information by electronic means about transmission capacity and prices.

The following collection of information contained in this Notice of Proposed Rulemaking has been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). For copies of the OMB submission, contact Michael Miller at 202–208–1415. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Persons wishing to comment on the collections of information should direct their comments to the Desk Officer FERC, Office of Management and Budget, Room 3019NEOB, Washington, D.C. 20503, phone 202–395–3087, facsimile: 202–395–7285 or via the Internet at hillier__t@a1.eop.gov. Comments must be filed with the Office of Management and Budget within 60 days of publication of this document in the Federal Register.[3] A copy of any comments filed with the Office of Management and Budget also should be sent to the following address at the Commission: Federal Energy Regulatory Commission, Information Services Division, Room 41–l7, Washington, DC 20426. For further information, contact Michael Miller, 202–208–1415.

ESTIMATED ANNUAL BURDEN

Data Collection	No. of Respondents	No. of Responses	Hours per Response	Total annual hours
Reporting	84	1	8352	701,568
Recordkeeping	84	1	1670	140,280
Total Annual Hours for Collection (Reporting + Recordkeeping, (if appropriate))=841,848.				

Data collection costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost per respondent to be the following:

Annualized Capital/Startup Costs	$190,000
Annualized Costs (Operations & Maintenance)	$620,000
Total Annualized Costs	$810,000

Internal Review

The Commission has reviewed the proposed collection of information and has determined that the collection of information is necessary and conforms to the Commission's plan, as described in this notice of proposed rulemaking, for the collection, efficient management, and use of the required information. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the information burden estimate set forth above.[4]

III. Discussion

A. Background

On March 29, 1995, the Commission issued the Open Access NOPR (referenced above). In the Open Access NOPR, the Commission proposed rules that would require public utilities that own and/or control facilities used for the transmission of electric energy in interstate commerce to provide wholesale customers with transmission services comparable to those that they provide to themselves. The goal of the Open Access NOPR is to eliminate unduly discriminatory practices in the provision of wholesale transmission services in interstate commerce, and to facilitate the development of a competitive bulk power market.

The Open Access NOPR includes minimum terms and conditions that a public utility would have to include in its wholesale transmission tariffs, the types of transmission and related ancillary services it must offer to its customers, and a requirement that each public utility purchase wholesale transmission services for its new wholesale sales and purchases under the same transmission tariffs applicable to its wholesale customers. The Open Access NOPR also proposes that public utilities be allowed to recover certain

[2] Open Access NOPR at pp. 95–96.

[3] Although the full text of this document and Attachment 1 will be published in the Federal Register, the three appendices attached to this document (Appendix ''A''—the report of the ''what'' working group, Appendix ''B''—the report of the ''how'' working group, and Appendix ''C''—templates for upload and download of files and HTML displays) will not. The complete NOPR, including these appendices, is available for inspection and copying in the Commission's Public Reference Room and is accessible through the Commission Issuance Posting System (CIPS), an electronic bulletin board service providing access to Commission documents.

[4] *See* 44 U.S.C. 3506 (c).

legitimate and verifiable stranded costs associated with certain requirements contracts entered into prior to July 11, 1994.

We do not believe that open access non-discriminatory transmission services can be completely realized until we remove real-world obstacles that prevent transmission customers from competing effectively with the Transmission Provider. One of these obstacles is unequal access to transmission information. In the Commission's view, transmission customers must have simultaneous access to the same information available to the Transmission Provider if truly non-discriminatory transmission services are to be a reality.

For this reason, when we issued the Open Access NOPR we also issued a notice of technical conference and request for comments (RIN Notice) that initiated this proceeding.[5] In the RIN Notice, the Commission announced that we were considering establishing RIN rules to effectuate the non-discrimination goals of the Open Access NOPR, and that we expected to require a RIN or other options to ensure that potential and actual transmission service customers will receive access to information.[6]

The Commission also announced its goal to establish uniform requirements for a RIN or other communications device at the same time that it adopts a rule requiring open access non-discriminatory transmission services. To accomplish this objective, the Commission invited interested persons to file comments and to participate in a technical conference, where they could make presentations on their positions. As a starting point, the Commission attached to the RIN Notice a Commission Staff paper identifying various RIN-related issues, and directed commenters to respond to the specific issues identified in the Staff paper and to provide their general comments on the RIN concept. The RIN Notice stated that the Commission expected to hold informal conferences, enlisting working groups to discuss any remaining issues, and that input from the technical conference and informal conferences would be the basis for subsequent procedures. The RIN Notice set a timetable to be followed, so that RIN requirements could be in place no later than the effective date of a final rule on open access.

Question 1. We seek comment on whether to continue to call the information network a ''RIN'' and, if not, what name should be used in its place.

In response to the RIN Notice, Kansas City Power & Light Company and Continental Power Exchange, Inc. sponsored a forum on EBBs held on March 31, 1995 in Kansas City. That forum was attended by more than 50 representatives of the 17 entities with open access filings (at that time) at the Commission, along with state regulators from Kansas and Missouri, and the Edison Electric Institute (EEI). A follow-up workshop on EBBs and RINs, sponsored by EEI, was held in Kansas City on April 19, 1995, and was attended by more than 150 people from all segments of the electric industry.

The North American Electric Reliability Council (NERC) and its nine regional councils offered to act as sponsor and neutral facilitator for the electric industry regarding electronic information systems to:

- Determine the information requirements of transmission users;
- Develop industry wide standards for reporting and using this information;
- Ensure that any information systems developed can build upon and be compatible with existing information systems in the industry; and
- Meet the Commission's goal of ensuring that potential purchasers of transmission services would receive access to information to enable them to obtain open access transmission service on a non-discriminatory basis.

The EEI workshop participants accepted NERC's offer to facilitate industry discussions on RINs. They also decided that, rather than awaiting Commission-drafted standards, they would try to develop an industry wide consensus, for submittal to the Commission, that would ensure fair and equal participation by both transmission customers and transmission providers and that would define the necessary information requirements and standards for a RIN.

Accordingly, on May 3–4, 1995, NERC called together a sub-group of workshop participants, representing all categories of transmission users and providers, to draft a model or ''straw man'' document that would outline a preliminary list of minimum information requirements for transmission users (*i.e.*, what information should be included on a RIN) and to reach agreement on what would constitute a fair and inclusive process for reaching consensus among transmission user groups on information requirements for a RIN. The resulting consensus document (Strawman 1) set the agenda for subsequent discussions at five regional workshops, held across the country, with participation by over 500 individuals from all segments of the electric power industry. The strawman group issued a revised document (Strawman 2), on June 2, 1995, based on those discussions. Strawman 2 was distributed to the participants in the regional workshops and to Commission Staff and served as the discussion point for a NERC-sponsored workshop held in Washington, DC on June 26–28, 1995. Although participants at this workshop were not able to reach consensus on numerous issues, they were able to identify the important unresolved issues and where efforts would need to be made to reach consensus.

Other groups also got involved early on with RIN-related issues. For example, the Western Group [7] began working in February 1995 (prior to issuance of the RIN Notice) on standards for the electronic information systems needed for implementation of comparable transmission service. WRTA members were joined in their discussions by members of the Southwest Regional Transmission Association (SWRTA), and the Northwest Regional Transmission Association (NWRTA). Together, WRTA, SWRTA, and NWRTA held a series of informal workshops to discuss tariff issues. Representatives of the Western Group also attended the April 19, 1995 meeting sponsored by EEI on national RIN standards and participated in the NERC process.

In all, 108 sets of comments were submitted to the Commission in response to the RIN Notice. Although the comments were nearly uniformly favorable to the RIN concept, the

[5] Real-Time Information Networks, 60 FR 17726 (April 7, 1995), IV FERC Stats. & Regs. ¶ 35,028 (March 29, 1995).

[6] In the RIN Notice, we chose the term ''Real-Time Information Network'' to describe the electronic information system envisioned by that notice. We chose that term because we wanted to distinguish the RIN from the electronic bulletin board (EBB) rules developed for the natural gas industry and because we wanted to emphasize that information would not be distributed to different users at different times. However, we did not mean to suggest that transmission providers would be precluded from taking adequate time to evaluate requests for service before responding to them. Perhaps a more precise term would have been a same-time information network.

In the two working group reports (discussed below) we are urged to change the name ''RIN'' to ''electronic information network'', by the ''what'' working group, and to ''transmission services information network'', by the ''how'' working group. Either of these designations would be equally acceptable. In the meantime, however, we are retaining the title ''RIN'' to make clear that this NOPR is proposing rules consistent with the ideas expressed in the RIN Notice.

[7] This group is composed of 17 major transmitting utilities, 3 non-utility suppliers, 10 transmission dependent utilities (or groups of utilities), and two state commissions, all located in the western United States and western Canada (the geographic area covered by the interconnected systems of the Western Systems Coordinating Council).

comments exposed many disagreements about what information should be contained on a RIN, what kind of a RIN system or systems should be required, what transactions should be covered, how terms should be defined, etc. However, most commenters understood that access to transmission information—by all parties at the same time—is essential to ensuring non-discriminatory open access transmission services.

The comments led to a technical conference on RINs (Technical Conference) held in Washington, DC on July 27 and 28, 1995. Panels at the Technical Conference discussed the status of industry efforts to date, industry standards for information systems, what information is needed on a RIN, how a RIN should be structured, what issues need to be resolved, and what steps should be taken next. In addition, demonstrations were presented on different transmission information systems and energy trading systems.

The participants in the July 27, 1995 conference agreed that the NERC-sponsored process, seeking to reach consensus and make recommendations to the Commission on what information should be included on a RIN, should continue, with NERC acting as a facilitator to promote participants reaching consensus and to prepare a ''what'' report to the Commission describing areas of consensus and non-consensus. The participants also agreed that another industry-sponsored working group should be created, with the Electric Power Research Institute (EPRI) acting as a facilitator to promote consensus on ''how'' to implement a system that would accomplish these objectives, and to prepare a ''how'' report to the Commission.

The NERC and EPRI representatives pledged to conduct an open process that would keep all interested persons informed of developments by the working groups and that would provide input from interested persons to working group members. Interested persons also were invited to attend open workshops sponsored by both working groups.

The ''what'' industry working group consisted of 26 members providing balanced representation from all segments of the electric power industry and included liaisons from the Commission, the ''how'' working group, NARUC, and Canadian utilities. Major industry trade groups sent observers. On October 9, 1995, the ''what'' working group made a draft report available for public review. On October 16, 1995, it submitted a final report to the Commission.

Following the Technical Conference, the ''how'' working group used a similar open and representative process that included participation by all industry and customer segments. On October 16, 1995, the ''how'' working group submitted to the Commission its report on how a RIN should be implemented.

The two working group reports address both the issues on which the participants were able to reach consensus and the issues on which no consensus was reached. Additionally, nine sets of comments were filed by working group participants who wished to provide a fuller explanation of their views on particular issues. We will address the issues raised by the working group reports below.

B. Overview

In what follows we discuss first, in section C below, what types of information must be posted on the RIN. The Commission proposes to adopt most of the technical parameters agreed to by the ''what'' working group. Our final rule would include general regulations governing who must develop and maintain RINs and what information must be posted on the RIN. Next, in section D below, we discuss the technical issues surrounding the implementation and use of RINs. We propose to set out the details of these requirements in a publication that would be entitled *Standardized Data Sets and Communication Protocols* and that would be issued as part of our final RIN rule. We propose to implement the RINS in two phases, with the first phase (Phase I) being completed when the Open Access rule goes into effect. In the discussion below, we address the specific, and at times very technical, issues considered respectively by the ''what'' and ''how'' working groups.

In section E below, we consider proposed standards of conduct governing the separation of transmission and generation functions. These standards are, we believe, a necessary adjunct to the RINs to ensure non-discriminatory access. The proposed standards are drawn from those that have been developed in our regulation of the natural gas industry. Last, in section F, we discuss issues of applicability for the proposed RINS and standards of conduct.

In setting out proposed requirements for implementing RINs, our primary objective is to establish regulations that ensure the accessibility of all information necessary to the full and fair implementation of the requirements of the Open Access NOPR. The problem, of course, is that we do not now know the specifics of the final Open Access rule. Yet, the information that will be required to be posted depends upon what is required or permitted under the final Open Access rule. For example, what must be posted on the RIN regarding the resale of transmission depends upon whether, in the final Open Access Rule, resales are permitted and, if so, under what conditions. Similarly, what information must be posted regarding transmission pricing discounting will depend upon whether, in the final Open Access Rule, discounting is permitted and, if so, under what conditions. These are just two examples, and are not inclusive, of RINs information that may change depending on what is in the final open access rule.

The final RIN rule will be designed to accommodate whatever final open access rules the Commission adopts and whatever industry structures evolve to meet those rules. In the interim, the RIN proposal follows the Proposed Open Access Rule. For example, it assumes that resales will be permitted [8] Similarly, the proposed RIN standards are designed to accommodate the so called ''contract path'' approach presently used in today's electricity markets. However, the Commission is open to other approaches that may develop in the future under an Open Access regime. Consequently, commenters should consider how the proposed RINS and standards of conduct regulations can be designed to meet these needs.

Question 2. What issues associated with RIN standards would have to be addressed if in an open access transmission environment the electric power industry moves to regional pricing, flow-based pricing, or other pricing models that depart from the ''contract path'' approach presently used for pricing electric transmission service? How in structuring RIN standards can the Commission provide for this contingency?

C. What Types of Information Need To Be Posted on a RIN

1. Summary of the ''What'' Working Group Report

The ''what'' working group report (What Report), represents a broad consensus of all segments of the electric utility industry. It summarizes the functional requirements for Real-Time Information Networks to facilitate open access to the transmission system.

[8] In designing proposed RINs regulations dealing with what may be required in the Final Open Access rule, our assumptions should in no way be taken as prejudging the various issues involved in the Open Access rulemaking.

a. Introduction

The What Report starts with a number of general assumptions and definitions. They include phasing of RIN implementation (Phases I and II), functional separation, accessibility to the RIN and definitions for ''transmission provider'', ''transmission customer'', and ''transmission provider's tariff.'' The What Report for the most part only addresses recommended Phase I requirements.

The What Report states that the RIN will include viewing tools enabling equivalent, basic access to the data base for all RIN users. However, many users will desire to customize their access to the data base and have the information presented in a variety of ways tailored to their individual needs. The RIN itself will not seek to satisfy this need. Instead, private software developers will be permitted and encouraged to develop and market customized viewing tools for the RIN.

The What Report lists five objectives of the RIN which are discussed in section C.2.(a) below. It recommends that, at least initially, the RIN be used as a transmission service reservation system, and not as a transmission scheduling system. Scheduling involves actually implementing a service on control area computers. Thus, the RIN is separate from system operations, and system reliability is handled separately. The decision to include transmission service scheduling on the RIN is left to later development.

Finally, the report discusses the requirement that information posted on the RIN will be date and time stamped and automatically stored in downloadable log files so that audits can be performed as required.

b. Scope and Definitions

The second section of the report deals with scope and definitions. The What Report makes a distinction between ''near-term'' and ''far-term'' transmission service requests. ''Near-term'' requests can be responded to quickly without additional work. ''Far-term'' requests require off-line studies to determine if the request for service can be accommodated.

The What Report also states that it does not seem possible to post availability for Network Integration Service Transmission on the RIN. Therefore, only the available transmission capability (ATC) for point-to-point transmission service would be posted on the RIN.

The What Report discusses the concept of ATC and gives some consideration to calculating it. Although the What Report recognizes that a consistent methodology is needed, no such methodology is proposed in the report.

The What Report discusses the concept of ''transmission paths'' for which ATC is to be reported and provides some guidelines for calculating ATC. It appears from the discussion in the What Report that ATC calculations over transmission paths would reflect the impacts of parallel flows. Although a contract path can be the basis for a commercial transmission transaction, such a transaction will use a combination of one or more transmission paths. A transmission path may be a single path or sequence of contiguous paths that form a continuous electrical connection. In alternating current systems, electricity will not flow solely on the contract path, but will flow on the entire transmission system of the interconnection in accordance with the laws of physics. Transmission Providers are urged to develop regionally accepted methods of attributing all contributions of loading to each transmission path including the effects of the real flow contribution of all transactions.

A major concern for the ''what'' working group (What Group) is over potential differences between the ATC posted on the RIN and the capability actually available when requested. The What Report points out that ATC calculations are only engineering estimates. There is no guarantee that they are correct. It states that ''[t]he amount of ATC posted shall be that amount that the Responsible Party expects, in good faith, to be available on a specific interface or Path in a specific direction, based on engineering analysis and other information that is available to the Responsible Party at the time of the posting.'' [9] Also, conditions may change between the time the ATC is calculated and when service is requested.

Under the What Group's proposal, the posting of ATC is not to be required until a business need arises for a transmission path. ''A 'business need' is signified by a request from a Transmission Customer concerning information or a reservation on a Path which has the potential to be constrained.'' [10] The What Report proposes two new attributes for transmission service to replace the terms ''firm'' and ''non-firm'' that are believed to be causing confusion as to the basic nature of transmission services. The new attributes are recallability and curtailability. All transmission service is curtailable. Curtailment is made only in cases ''where system reliability is threatened and/or emergency conditions exist.'' [11] Recallability is ''the right of a Transmission Provider to interrupt all or part of a transmission service for any reason that is not unduly discriminatory * * * .'' [12] The What Report states that recallability distinguishes between firm and non-firm service. According to the What Report, firm service is not recallable.

The What Report defines a standard set of attributes for describing transmission products on the RIN.

The scope and definitions section concludes with discussions of several areas of non-consensus. The What Group could not agree on the following: whether and how to post information about ancillary services on the RIN; whether transmission customers not using transmission capability that they reserve must make it available to others; whether to post all discounts or only those provided to affiliates; and whether generator cost and status information to verify redispatch/opportunity cost charges must be available on the RIN.

c. Posting Transaction Information

The Posting Transaction Information section discusses four major types of information that are to be posted on the RIN:

1. Available Transmission Capability Information;

2. Transmission Providers' Product Offerings and Prices;

3. Specific Transmission Service Requests; and

4. Informal Transmission Communications.

The What Report itemizes the information that should be posted in each of these areas. A table identifies who is responsible for posting what on the RIN. The What Group was unable to reach consensus on whether to require the posting of additional information beyond ATC. Some believe that additional information is needed as a safeguard against anti-competitive behavior and provides valuable information about transmission constraints. This information includes the run status of generators that have a significant impact on ATC, information about constrained transmission lines, and the identity and status of facilities causing curtailments. Others believe that this additional information is unnecessary and burdensome. This

[9] What Report at 8.

[10] What Report at 10.

[11] What Report at 15.

[12] What Report at 14.

information also is believed to be commercially sensitive.

A second area of non-consensus was whether individual transmission requests and responses should be made known only to the Transmission Customer making the request, the Transmission Provider to whom the request was made and, to the extent necessary, the affected control area operators and/or security centers *or* to all users of the RIN on a same-time basis. Some argue that this information is commercially sensitive and should be limited just to the parties in a transaction. Others believe that full disclosure is important to safeguard against potential anti-competitive behavior. A compromise was proposed, but not agreed to, to delay release of this information for a certain time.

2. Discussion

The What Group assumed the task of developing recommended requirements for the information to be posted on a RIN that would meet the industry's need for customer access to information about wholesale transmission services. In the text that follows, we will discuss these recommendations and will identify those recommendations that at this stage we reject (as previously noted, further background is provided by the complete What Report, attached to this NOPR as Appendix ''A''). We also will discuss certain issues not addressed by the What Group.

a. RIN Objectives

The Commission proposes to modify slightly the five objectives listed in the What Report. The changes are intended to expand and better define the objectives. The revised objectives are:

1. Allow Transmission Customers to make requests for transmission services offered by Transmission Providers and the secondary market;

2. Allow Transmission Customers to view and download in standard formats, using standard protocols, necessary information regarding the transmission system to enable prudent business decision making;

3. Provide a mechanism for posting, viewing, uploading and downloading of information between customers and providers regarding available products and desired services;

4. Enable all Transmission Customers to clearly identify the extent to which their transmission service requests and/or schedules were denied or curtailed and how their treatment compares to that of their competitors; and

5. Allow Transmission Customers to access in electronic format information supporting ATC calculations and historical transmission service requests and schedules for various audit purposes.

The What Report states that ''[i]n instances where requests are denied or transactions are curtailed, the RIN should provide a mechanism for Transmission Providers to communicate to Transmission Customers (1) the reason those transactions could not be accommodated and (2) the options, if any, for adjusting operation of the system to increase transfer capability in order to accommodate those transactions.'' [13] The Commission wishes to clarify that since scheduling and the curtailment of schedules will not be done through the RIN initially, this curtailment information would be for information purposes only.

b. ATC for Network Integration Service

The What Report states that it is not possible to post the availability of Network Integration Service Transmission on a RIN. The Commission recognizes that before-the-fact measurement of the availability of network transmission service is difficult. Nonetheless, the Commission believes that it is important to give potential network customers an easy-to-understand indicator of service availability (*e.g.*, in MWs), in addition to power flow data and other studies used by utilities to support the calculation of ATC.

Question 3. The Commission requests comments on how best to post the availability of network transmission service on the RIN. Should Transmission Providers be required to post conservative estimates as a preliminary matter that could be improved with additional study? Is there an alternative service concept that is more suitable to measurement than the current version of network service?

As discussed in section C.2.(o) below, information supporting ''point-to-point'' service ATC calculations is required to be available for download. This information should help potential network customers assess the availability of network service capability.

c. ATC Calculation Methodology

The What Group notes that the proposed Open Access rule requires that the utility ''describe the method used to estimate ATC in sufficient detail to allow others to do the same analysis.'' [14] However, the proposed Open Access rule does not propose a methodology for calculating ATC. The What Report contains some useful guidelines for calculating ATC/Total Transmission Capability (TTC), but does not present specific methodologies.

In calculating ATC, public utilities will need to reserve enough capacity to ensure the reliable operation of the transmission system. Thus, the Transmission Provider (or its designated agent) will need to calculate the additional transfer capability that is available without violating reliability limits. Because of uncertainties in system conditions and utilities' reliance on interconnections to provide generation reserves during emergencies, the Transmission Provider must calculate an appropriate transmission margin. Transmission margin calculations should be based on the published standards, criteria and guides, and operating experience of the individual Transmission Provider (as filed with FERC as part of FERC Form 715 and as filed in transmission tariffs). These calculations must be consistent with industry standards, and these standards must be available for review on the RIN.

The Commission expects that an ATC/TTC calculation methodology can be developed on a consistent, industry-wide basis and encourages efforts to do so. We understand that some of the details may need to differ to reflect regional or utility- specific situations. Transmission Providers are expected to use prudent utility practice to determine ATC. The Commission understands that utilities have historically responded to requests for transmission service using prudent utility practice to determine if sufficient capacity is available to accommodate the request. These practices vary by region and even by utility. Determination of ATC has been made with computer software with a level of complexity that varies from one Transmission Provider to another or with simple formulas or graphical tools (nomograms) created with a mixture of engineering analysis and engineering judgment. The Commission requires the use of the best tools for determining ATC available to the Transmission Provider at the time. Our requirement to provide data and methods on the RIN is to be understood in this context; it may require, for example, posting of the nomograms, the data applied to them, a description of the procedure for applying the data to the nomogram, and an explanation of how the nomogram is derived.

However, the Transmission Provider must strictly adhere to the limits imposed by the resulting ATC determination in its own use of transmission. It must also provide adequate data for the Commission and other industry participants to monitor

[13] What Report at 6.

[14] What Report at 121.

any potential violations of the ATC limit by the Transmission Provider. Further, if the Transmission Provider revises its ATC calculation for any time period, the new availability of transmission capacity must be posted on the RIN in a manner that allows all transmission customers an equal opportunity to apply for its use.

The Commission urges Transmission Providers to improve and coordinate methods of estimating ATC. This will improve the efficiency of capacity utilization by all parties, including the Transmission Provider itself, while maintaining system reliability. We expect that such improved methods and prudent utility practice in the future will require cooperative regional calculation of ATC by all Transmission Providers in a region. We believe that all Transmission Providers should take the same approach to calculating ATC/TTC and use the same basic methodology.

Question 4. The Commission requests comment on how to develop a consistent, industry-wide method of calculating ATC/TTC.

d. Provisions for Unscheduled Flows

The What Report states that ''[a]ppropriate provision must be made to properly account for ''unscheduled flow'' through each Path resulting from each known transaction.'' [15] This should not be interpreted as making the requirements in this proposed rulemaking depend on resolution of this issue.

e. Paths for Which ATC Is Not Posted

The What Report states that ATC should be posted for paths as business needs arise. Some Paths are minor ties between utilities or control areas for which transfer capability calculations have not yet been performed and on which no constraint is anticipated because of the lack of commercial activity. A ''business need'' is defined, in part, by a transmission customer requesting information about a path.

The business need limitation is intended to limit the number of paths for which ATC must be posted. However, it is not clear that it does. For example, the Open Access rulemaking proposes that Transmission Providers must take wholesale transmission service under their own tariff. This makes them transmission customers. Any wholesale trade they do over these minor ties would appear to trigger the ''business need'' requirement for ATC posting.

Another approach to limiting the burden of ATC calculations is to allow Transmission Providers to adjust the amount of effort put into calculating ATC and the frequency of recalculating ATC based on the level of commercial interest in a path and how constrained the path is over time. For paths that are never constrained because of the lack of commercial activity, a rough estimate of capability could be posted and could be updated rarely. For constrained paths, a much more accurate calculation of capability is needed and it should be updated frequently.

Question 5. The Commission requests comments on ways to minimize the burden of ATC calculations, while ensuring that wholesale transmission customers have the information they need.

f. Differences in ATCs

Because parties on either side of an interface each may use different engineering assumptions, they may calculate different ATC values. The What Report says that the lower ATC must be used. The Commission expects that differences in ATCs will be small and will narrow over time as Transmission Providers work to develop consistent methods of calculating ATC.

g. Format for Transmission Tariffs

The Commission agrees with the recommendation of the What Group that providers must provide downloadable files of their complete tariffs on the RIN. However, the What Report says that the format of these files should be one generally accepted by all utilities in the region. The issue of the format for the transmission tariffs will be addressed in the Open Access rule. This format would also be the format for tariffs available on the RIN.

Question 6. The Commission requests comment on a standard format for electronic submission of transmission tariffs to the Commission.

h. Posting Requirements for Recallability and Curtailability

The What Report states that ''[o]ther elements of Recallable service which will be posted on an EIN include: permissible reasons for recall, recall procedures, reinstatement provisions and placement in the request queue as applicable.'' [16] Because the permissible reasons for recall, recall procedures, and reinstatement provisions are defined in the tariff and the tariff is available for download on the RIN, they do not need to be posted separately.

Similarly, the report says ''curtailment information which will be posted on the RIN as part of the product definition includes: permissible reasons for curtailment, notice required, curtailment procedures, and curtailment priority relative to other classes and other customers in the same class if necessary due to FERC curtailment queuing policy.'' [17] The Commission proposes that if the permissible reasons for curtailment, notice required, curtailment procedures, and curtailment priority are defined in the tariff and the tariff is available for download on the RIN, they do not need to be posted separately.

i. Communicating Curtailments and Denials of Requests for Service

The Commission proposes that when requests for service are denied, or when transactions are curtailed, Transmission Providers must communicate to transmission customers, through a mechanism that they must install into the RIN: (1) The reason(s) that the transaction(s) could not be accommodated; and (2) the available options, if any, for adjusting the operation of the Transmission Provider's system to increase transfer capability in order to accommodate the transaction(s).

Question 7. The Commission requests comments on what information about curtailments and denials of requests for service should be communicated on a RIN.

Question 8. What specifications would be needed for information about curtailments and denials of requests for service to be posted in HTML displays and what specifications and formats would be needed to standardize downloadable files? [18]

j. Posting Information About Ancillary Services

The What Group was unable to define requirements for the posting of information about ancillary services. Ancillary services are those services necessary to support the transmission of electric power from seller to purchaser at wholesale given the obligations of control areas and transmitting utilities within those control areas to maintain reliable operations of the interconnected transmission system. Basic wholesale transmission service without ancillary services may be of little or no value to prospective customers. A variety of ancillary services is needed in conjunction with providing basic wholesale transmission service to a customer. The following six ancillary services are identified in the Open Access NOPR: [19]

1. Loss Compensation Service;
2. Load Following Service;
3. System Protection Service;

[15] What Report at 8.

[16] What Report at 14.

[17] What Report at 15.

[18] HTLM stands for Hyper Text Markup Language.

[19] 60 FR at 17683–85.

4. Energy Imbalance Service;
5. Reactive Power/Voltage Control Service; and
6. Scheduling and Dispatching Service.

The Commission proposes that the Transmission Provider post offers for ancillary services on the RIN. Other entities offering the same ancillary services shall have a comparable right to post offers on the RIN.

Question 9. The Commission requests comment on where on the RIN offers by other entities to provide ancillary service should be placed. The What Report states that these offers should be posted in the ''Informal Transmission Communications'' section of the RIN. Would this place third-party providers at a disadvantage relative to the Transmission Provider?

The Commission proposes that entities that post offers to provide ancillary services on the RIN should pay the costs associated with posting this information.

Question 10. The Commission requests comments on how to determine the costs associated with posting ancillary services on the RIN.

Question 11. With regard to information about offers to provide ancillary services provided by an entity other than the Transmission Provider, what specifications would be needed for this information to be posted in HTML displays and what specifications and formats would be needed to standardize downloadable files?

The following information about ancillary services is important to wholesale transmission users and should be posted on the RIN:

- Ancillary services that are available from the Transmission Provider;
- Ancillary services that may be provided by the transmission customer or third parties;
- Price of each ancillary service;
- Which ancillary services, if any, are bundled with transmission service;
- Paths that the ancillary services information pertains to;
- Deviation band, if any;
- Whether the rates for any specific ancillary service would change if taken in combination with any other ancillary service, such as operating reserve and load following;
- Whether any technical limitations exist on who could provide specific ancillary services;
- Whether the rights of ancillary services are reassignable; and
- Identity of third party if ancillary services are being procured from a third party.

Question 12. The Commission requests comment on whether there is any additional information needed about ancillary services that is not included in the list. Is any information on the list not needed?

Although the ancillary service information on the RIN should be the most current information available to the Transmission Provider, the information on ancillary services will not change as frequently as the information on the capability availability. However, there is definitely a need to update ancillary services information on RIN on an ongoing basis.

Question 13. The Commission requests comment on how often ancillary services information should be updated.

Ancillary services information should be posted for each transmission path of the Transmission Provider for which ATC is posted. If there are exceptions to the general applicability of the ancillary services posting requirements because of technical limitations on a specific interface, it should be so stated.

k. Must Transmission Customers Resell Unused Capability?

The What Report raised the question of whether Transmission Customers should be required to make available to other wholesale customers unused transmission capability to which they have rights. This issue is not a RINs issue and will be addressed in the Open Access rule.

l. Posting Information About Resales

Although the What Report states that a Transmission Customer should be able to post its transmission capability rights for resale, it does not say where resale offers are to be posted on the RIN. This issue is addressed in section D.2(g)iv below.

m. Mechanism for Discounting Transmission Service Rates

The What Report raises a question about whether all transmission rate discounts should be posted on the RIN on the basis that a competitive market can be achieved only through non-discriminatory discounting. An alternative posed in the What Report is to post only discounts that a Transmission Provider provides to itself or its affiliates. This is to police self-dealing and affiliate favoritism which are not an issue in other transactions. It is important to distinguish between an offer of a discount and a discount already given. The Commission is proposing, in the proposed standards of conduct, to require a Transmission Provider that offers any discount to itself or to its merchant function or an affiliate to offer, at the same time, on the RIN, comparable discounts for similar service to all Transmission Customers. As to discounts that the Transmission Provider has agreed to give to any Transmission Customer (affiliated or unaffiliated), the Commission is proposing that these discounts must be posted on the RIN within 24 hours after the agreement is entered into (measured from when ATC is adjusted in response to the agreement), and that they remain posted for 30 days.

Question 14. The Commission seeks comment on whether all transmission discounts should be posted on the RIN, or only those provided to the Transmission Provider or its affiliates. If discounts are to be posted, when should this be done? Also, commenters should address whether requiring the Transmission Provider to offer ''comparable discounts for similar service to all transmission customers'' is necessary and/or sufficient to prevent unduly discriminatory pricing practices.

The Commission proposes that the information about discounts to affiliates should be posted on the RIN using HTML displays and as files that are available for download.

Question 15. Regarding information on affiliate discounts, what specifications are needed for the information to be posted in HTML displays and what specifications and formats are needed for the downloadable files?

n. Discussion of Generation Information Related To Redispatch/Opportunity Costs

Opportunity or redispatch costs are meant to compensate a party that gives up its right to wholesale transmission service so that another party can take service. The opportunity/redispatch costs associated with increasing the ATC of a constrained Transmission Path will depend upon the time, duration and nature of the requested transmission use because of the dynamics of system loads, economic dispatch, outages, loop flow, the types of generation resources involved, the availability and cost of energy storage, and other operating conditions expected during the time of use. The What Report raises the issue of whether the ability of the Transmission Provider to impose these costs on the Transmission Customer requires the posting of generator run status and cost information on the RIN.

Transmission Providers may charge only for legitimate and verifiable opportunity/redispatch costs. Information needed to verify these costs is required to be provided to the Transmission Customer charged on request. This information is not required to be posted on the RIN.

o. Discussion of Providing Additional Information Beyond ATC

The proposed rules on Open Access state that ''[t]he utility must make all data used in calculating the ATC

publicly available.'' [20] This information must be available for download on the RIN.

Question 16. The Commission requests comments on how the data used in calculating ATC should be formatted. Should it be in free form text, predefined tables, or comma delimited ASCII files? If in free form text, should it be in plain ASCII text or in a word processor format, such as WordPerfect or Word?

Question 17. The Commission requests comments on what is the appropriate time delay for making supporting information on ATC available. Should the Commission require specific formats for ATC supporting data? If so, what should the formats be?

Near-Term Transmission Information

The What Report provides arguments for and against providing additional information beyond ATC on the RIN. Those entities who are against providing additional information argue that this information is of little practical use, sufficiently voluminous to substantially reduce performance of the RIN, and burdensome to provide. They further argue that some of this information is competitive data. Those entities who are in favor of providing additional information beyond ATC on the RIN argue that the additional information will increase the confidence of transmission customers in the validity of the posted ATC and that this information will help the transmission customers anticipate with greater certainty whether to attempt to request and schedule resources that may be subject to curtailment due to projected loading trends on certain system components.

The Commission believes that the issue of customer confidence can be addressed through audits of posted ATC values or by raising the issue at regional forums or filing a complaint with the Commission. However, the Commission also believes that transmission customers should have as much pertinent information available as will enable them to make informed decisions about the relative quality of wholesale transmission services they intend to request and purchase.

The Commission therefore proposes to require that Transmission Providers post information about those system elements that have a direct and significant impact on ATC. Such elements could include generators, transmission lines, phase shifters, series and shunt capacitors, static VAR compensators, special protection systems or remedial action schemes, etc. In addition, the Commission proposes to require the posting of actual path loadings in addition to the path schedules.

Question 18. To keep the amount of information on the RIN manageable, the Commission requests comment on whether it is sufficient to provide information only about planned outages and return dates (for both planned and forced outages) for those system elements deemed to have a direct and significant impact on ATC and whether posting this information on the RIN would cause any confidentiality concerns.

Question 19. Since many system elements can impact the ATC of a path, how should ''significant and direct impact'' be defined? Is it acceptable to limit the additional information to those system elements for which nomograms, derating tables, and operating guides have been developed?

Question 20. Are there any difficulties, technical or otherwise, associated with posting actual path flows on the RIN?

The ATC of some transmission paths is a function of run status and/or megawatt output of certain generators. For example, the Southern California Import Transmission Nomogram is affected by the run status of units in the Palo Verde Generation Complex. When one or more of the Palo Verde units are not on line, the nomogram is reduced by several hundred megawatts.[21]

Question 21. In cases where ATC of a path is a function of run status of one or more generators, is it sufficient to post the expected amount and date of changes to ATC on the RIN, corresponding to the planned outage or return dates of generators?

Question 22. If operating guides, nomograms, operating studies, and similar information are to be made available on the RIN for download, would it be logical to expect that transmission customers will be able to deduce the run status of those generators which significantly and directly impact ATC by observing the changes to ATC?

Far-Term Transmission Information

The What Report proposes that for ''far-term'' transmission service (over one year), firm service (non-recallable) ATC should be posted ''seasonal[ly], by year, for years 1–10 (as available).'' [22] The caveat ''as available'' suggests that the What Group does not want utilities to have to perform additional transmission studies to calculate ''far-term'' ATCs beyond those done for normal planning and special requests.

The Commission agrees with this. However, we find the ''as available'' requirement vague. It appears to leave the posting of this information to the discretion of the Transmission Provider. For clarity, the Commission proposes to require that any planning or specifically requested studies of the transmission network performed by the Transmission Provider be provided on the RIN on a same-time basis. This would include only those parts of customer-specific interconnection studies that relate to network impacts.

Question 23. The Commission requests comments on how transmission studies should be formatted for download from the RIN. Should they be in free form ASCII text, or in a word processor format, such as WordPerfect or Word?

p. Requested Start and End Times/Dates

In the section in the What Report on ''Information Provided by Transmission Customer in Requesting Service'', under ''duration'' the report states that ''[t]his must correspond to full clock hour periods.'' [23] The Commission proposes to enhance flexibility by requiring instead that the duration must be a specific time as stated in the Transmission Provider's tariff.

q. Transaction Anonymity

The What Report raises a question about whether individual transmission requests and responses should be made known only to the Transmission Customer making the request, the Transmission Provider to whom the request is made and, to the extent necessary, the affected control area operators and/or security centers, or to all users of the RIN on a same-time basis. The Commission proposes to restrict information about the request and response process, while it is ongoing, to those parties directly involved.

We believe that this procedure will be adequate because we are proposing standards of conduct that would require Transmission Providers to separate the functions of their marketing employees and their system operations employees and that would restrict access by wholesale marketing employees to information available on the RIN. Information about a completed request and response process should be recorded in the audit file.

r. Auditing Transmission Service Information

The Commission proposes that RIN audit log files [24] must be downloadable from the RIN in a standard format and must be retained on a rolling basis for three years from entry on the RIN.

The Commission notes that transmission transaction prices are to be

[20] What Report at 121.

[21] A nomogram defines the interactive relationship of the transfer capability of a transmission path to other system conditions, especially power flows on one or more other transmission paths.

[22] What Report at 24.

[23] What Report at 26.

[24] *See* What Report at 31.

included in the information in the audit file proposed in the What Report.[25] We do not consider price information concerning cost-based transmission services to be commercially sensitive. With respect to information concerning negotiations on transmission requests, we propose that such information not be posted unless an agreement to provide the transmission is reached.[26] This information is to be available only in the audit file. In addition, if an agreement is reached, we propose that the identity of parties to transmission transactions be masked until a standard release period elapses. This release period should be a standard period after which it is commonly recognized that most information is no longer commercially sensitive. The Commission proposes that a reasonable standard release period is 30 days after the date when the Transmission Provider's ATC was adjusted in response to the transaction; after that date all transaction data will be made available.

Question 24. The Commission requests comment on what information should be considered commercially sensitive, the 30-day release period proposal, and on how and when commercially sensitive information should be released to concerned parties before the standard release period. Should affiliated transactions be treated differently?

D. Technical Issues Concerning the Development and Implementation of RINS

1. Summary of the ''How'' Working Group Report

After a review of the process used by the ''how'' working group (How Group) in formulating its views, and after consideration of the Group's efforts to invite input from a broad spectrum of industry segments, the Commission is satisfied that the How Group conducted its process in an inclusive and open manner. The How Group report (How Report) represents a broad agreement among all segments of the electric power industry. It presents the agreed minimum requirements for computer systems and associated communications facilities needed by public utilities to provide comparable access to transmission and ancillary services information by all wholesale transmission users.[27]

The How Group proposes a two-phase approach. It believes that the Phase I implementation provides the information needed for the Commission's open access program and works well enough to communicate this information to customers. Under the How Group proposal, RINs would become fully functional in Phase II. The How Report recommends that Phase II requirements be implemented 24 months after the effective date of the final rule establishing Phase I RIN requirements.

a. Phase I Recommendations

The How Group proposes that the required transmission service information be posted on RINs operated by the transmission-owning public utility, jointly with other utilities, or by a third party.[28] Each RIN implementation, whether on behalf of a single entity or a group of utilities, is referred to as a Node. A RIN operated jointly by several utilities would be considered one Node. RIN Nodes must be accessible through the Internet. By connecting each Node through the Internet, transmission service information from each utility becomes part of a network. With a single Internet connection, customers would be able to access information from any utility and would even be able to display information from several Nodes at the same time.[29]

Nodes must support the use of Internet tools. These inexpensive, widely available, and well-tested tools will permit customers to access RIN information easily and to download [30] it to available desk-top database programs, spreadsheets, and other applications.[31] Customers would also be able to upload [32] information to RIN Nodes. The specific tools for doing so are described in Appendix B.

RIN users would access Nodes using World Wide Web (WWW) browsers.[33] Each Node would display information using the HTML protocol required by World Wide Web browsers. Screen displays would consist of a series of pages that may be viewed by customers without requiring them to download the pages.[34] Under the standards that will accompany issuance of a final rule on RINs, the information on each page, but not the actual displays, must be standardized. Information would also be required to be made available for downloading, in a standardized ASCII [35] format, using the Internet's File Transfer Protocol (FTP).

In Phase I, customers would be able to use the RIN to purchase transmission from public utilities. They would be able to request capacity either by completing a standardized form contained in an on-line HTML page or by uploading a filled-out form using FTP.[36] Customers who want to resell transmission capacity would upload (post) the relevant information to the same RIN Node used by the primary provider from whom they purchased the ATC.[37] Customers would also be able to upload Want Ads containing such information as requests to purchase transmission capacity.[38]

In Phase I, transmission-owning public utilities may, but would not be required to, provide private connections at the request of a customer. These connections could include leased-lines or connections to a private network. These connections would have to use the same Internet tools as are required for the Internet connection.[39] Customers would pay for the cost of the connections. If a connection is made for one customer, the same type of private connection must be made available to all customers in a comparable manner. In Phase II, utilities would be *required* to provide these connections.

The How Report proposes that utilities may provide value-added services for a fee on a fair and non-discriminatory basis. Such services would include notifying customers of changes in available capacity, beyond simply posting a notice of the change.[40]

The How Group developed a model of the information requirements that the What Group identified as needed for comparable access. For Phase I, the model specifies the information that must be available at each RIN Node, how the information may be requested and the layout of the information received by customers. Customers would be limited to obtaining

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[25] *See* What Report at 31–32.

[26] An exception would be where the Transmission Provider offers discounts to its merchant function or an affiliate. As noted elsewhere, such information would need to be posted regardless of whether an agreement to provide transmission was reached.

[27] The version of this report attached to this proposal intentionally omits Appendix C (Workshop Participants), Appendix D (Survey Questionnaire and Results), and Appendix F (Correspondence with ''What'' Working Group). The How Report, in its entirety, is posted on CIPS.

[28] How Report at § 2.4.1 (a).

[29] How Report at § 2.4.1 (f).

[30] Download refers to the transfer of a file from a RIN Node to the user's computer system.

[31] How Report at § 2.4.1 (c).

[32] This is accomplished by transferring a file from the user's computer system to a RIN Node.

[33] The World Wide Web is a system of computer resources that are accessed through the Internet.

A Browser is a computer program for retrieving and reading hypermedia documents from the WWW. A hypermedia document can contain, text, graphics, video, sound or data. These documents are often linked to other documents.

[34] How Report at § 3.2.3

[35] ASCII refers to the American Standard Code for Information Interchange, a code for character representation.

[36] How Report at § 3.2.6.

[37] How Report at § 3.2.4

[38] How Report at § 3.2.3 (e).

[39] How Report at § 2.4.1 (g).

[40] How Report at §§ 3.1.2 (c) and 3.2.2.

information from HTML text displays and selecting from menus of downloadable files. Customers would receive the information either as HTML pages or as ASCII files in a predetermined form and layout.

The information model for Phase II, while not fully specified, would provide customers with much more flexibility in requesting and receiving information. Customers would be able to make complex queries of a data base and specify the order in which the information will be received.

For security purposes, and as an aid in auditing performance and transactions, customers would be required to register with the transmission-owning utility or its agent before they are permitted access to the utility's transmission service information on the RIN.[41]

The How Report provides a number of performance standards and a limited set of security precautions. Performance requirements include sizing RIN Nodes to handle the loading of registered subscribers, responding to subscriber requests, backing up the system, and other areas that are necessary for the system to function as desired. Security precautions include firewalls[42] between computer systems and the Internet, the use of passwords, the use of data encryption for uploads of sensitive or confidential information, and the use of ASCII text for uploads of other information.

b. Phase II Requirements

The specifications for Phase II are less detailed than those for Phase I, but the How Group anticipates that Phase II RINs would be an upgrade of Phase I and would not make Phase I investments obsolete. Phase I is envisioned as a prototype for Phase II. Once Phase I becomes operational, the full information and functional requirements needed to support open access transmission service will become clearer. The How Report recommends the formation of a RIN Management Organization to develop Phase II standards for submission to the Commission. The How Group proposes that Phase II be implemented two years after issuance of the final rule on Phase I RIN requirements.

The How Group foresees the need for several key additional requirements in Phase II.[43] In Phase II, they foresee that RIN Nodes must provide connections to private networks if requested by a customer, for a negotiated cost-based fee, whereas in Phase I public utilities would not be required to make these connections. In Phase II, RIN Nodes would have to offer the capability of informing customers immediately when information of interest to them is changed by the provider. RIN Nodes would be required to support search and select tools to access information in RIN Node data bases, and to meet a more complete set of performance requirements.

In Phase II, the information model would change, although the information in the data base would be the same. Customers would be able to receive information by querying a data base. The information would no longer be received in a predetermined fixed layout. Customers would be able to specify the exact information they want to receive and the layout they want to receive it in. For example, customers would be able to request available capacity by quantity of capacity, point of delivery, date of availability, and have it sorted by the name of the transmission-owning public utility. The customer also would be able to define the order in which the information is received in the file.

2. Discussion

The How Group assumed the task of specifying, in a very short period of time, a RIN that would meet the Commission's requirement for customer access to information about transmission services. It developed a proposed solution that places the RIN of each transmission-owning public utility on a network that can be accessed by all customers, using inexpensive tools with a single connection, with what the group believes to be a reasonable cost to both utilities and customers, sufficient security, and sufficient response time. The proposal to use the Internet to tie RIN Nodes together appears to be an inexpensive way for customers to access transmission services information and for transmission-owning public utilities to provide it to them.

The Commission proposes to adopt the proposals contained in the How Report, with the exceptions discussed below.[44] Except where noted, the issues discussed are Phase I issues.

a. Phasing

Because of the complexity of building RINs, and the need to begin the Commission's transmission open access program promptly, the Commission agrees with the How Report that a phased approach to implementation is warranted. The Commission proposes to require Phase I implementation as of the effective date of a final rule on non-discriminatory open access transmission and stranded costs.

At How Group meetings, many transmission-owning public utilities expressed the view that implementing Phase I within 90 days of the date of a final RIN Rule may not allow sufficient time to design, build, and test RINs. The How Report notes that a large risk exists that many RINs will not be fully functioning at that time. These transmission-owning public utilities request that the Commission permit a six-month implementation period.

Question 25. The Commission requests comments on how long the implementation schedule should be for Phase I.

Phase I would provide a good first step toward ensuring that sufficient information is available to utility customers to achieve the Commission's goal of comparable access to transmission information. It would not, however, provide all of the performance requirements or information needed for a long-term open access RIN.

Phase II would provide for more expanded services. The How Report addresses Phase II issues, but does not fully specify them. It proposes that Phase II be implemented within two years of a final rule on RINs. The Commission believes that the need for the additional functions and performance requirements proposed for Phase II requires expeditious implementation. Accordingly, the Commission requests that the industry continue the process of developing standards, and provide a consensus report to the Commission on Phase II recommendations by no later than January 1, 1997. We anticipate that this report would be the basis of supplemental RIN proceedings to implement Phase II RIN requirements.

b. Standards Issues

Based on our experience with implementing standards for natural gas pipeline electronic bulletin boards,[45] a

[41] How Report at § 3.2.1.

[42] A firewall increases security by blocking access to certain services on a private network from the Internet.

[43] How Report at § 2.4.2.

[44] The Report refers to Buy/Sell transactions. As used in the Report, the term refers to a request to purchase transmission capacity and the response to the request. The reader of the How Report should substitute Purchase request/Response for buy/sell whenever it is encountered.

[45] See Order No. 563, Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Final Rule, III FERC Stats. & Regs. ¶ 30,988 (1993); Order 563–A, Order on Reh'g, III FERC Stats. & Regs. ¶ 30,994 (1994); Order 563–B, Order Denying Reh'g, 68 FERC

Continued

major concern of the Commission is that the proposed standards be sufficiently unambiguous to provide consistent implementation of the standards on every RIN Node. Customers and other users of RINs should be able to use the same software to access all RIN Nodes and should be able to expect that procedures and data definitions will be the same on all Nodes. The Commission must ensure that every RIN Node would be presenting information that would be clearly understood.

i. Phase I Data Definitions for HTML Pages and File Transfers

The information model, data dictionary and various templates appearing in the How Report specify the name, definition and format of the data items to be communicated on the RIN. They are intended to be the basis for the standards specifying file uploads and downloads and HTML displays. Because of the importance of these standards to the usability and uniformity of RINs, the Commission must ensure that downloadable and uploadable files will have the same unambiguous structure, field formats, units and definitions, etc., no matter which RIN Node they come from or go to. The Commission is similarly concerned that all WWW page displays, while not necessarily having the same appearance, contain the same information and use the same definitions, etc.

Question 26. Does the How Report define HTML displays and downloadable files with sufficient clarity to permit public utilities to implement Phase I such that the downloaded files and HTML displays received by customers from each RIN have the same definitions, etc.? If not, what clarifications are needed? Similarly, are uploaded files sufficiently defined in the How Report?

With these goals in mind, the Commission has compiled a series of templates (tables) that show in one place the specifications that appear in various sections of the How Report. The templates contained in Appendix ''C,'' are intended to help produce a consistent implementation of RIN requirements and highlight problems that could hinder consistent implementation of RIN standards.

In Appendix ''C'', the Commission proposes to make changes to certain definitions, data formats, and specifications appearing in the How Report.

Question 27. The Commission invites comment on the issues discussed in Appendix ''C''.

The Commission proposes to add a price field to the templates that would specify available capacity and those templates associated with the purchase of capacity. The price field would allow primary providers to offer capacity to buyers at a discount. The price field in the available capacity templates would contain the initially offered price, whether this is the tariff price or a discount. Adding the price field to the templates for the purchase of capacity would allow buyers to offer a price for capacity below the posted price. Further discounts from any posted offered price could be negotiated. The price field in the purchase of capacity templates would permit customers to offer a price different than the offering price.

ii. Internet Browsers

There are a large number of Internet browsers available commercially and in the public domain. The How Report proposes that browsers support ''at least'' HTML version 3 and ''optionally'' support Secure Sockets Layer. The HTML standards used by browsers change from time to time, and, in addition, various browsers can support different extensions to the standards. The Commission does not want to stifle innovation, but at the same time it does not want chaos on the RIN. The Commission does not want customers to be forced to use different browsers for different RIN Nodes. The Commission wants to ensure that a customer will be able to choose a browser and use it to access all RIN Nodes.

Question 28. The Commission requests comments on how to ensure that a customer will be able to choose a browser and use it to access all RIN Nodes.

iii. Bandwidth of Node Connections to the Internet

The How Report proposes a formula to calculate the minimum bandwidth connection between a RIN Node and the Internet using the criteria of customers receiving data at the rate of 8,000 bits per second.[46] This speed may be adequate for customers reading HTML pages, which are about 8,000 bits in size, but it might be too slow for customers downloading many 100,000 byte files.[47] Eight thousand bits per second is much slower than the 28,800 bit per second telephone connections many private individuals use to connect to the Internet. Electric utilities will likely have even faster direct connections to the Internet. The Commission is concerned that the basis for the calculation in the Report will lead to connections that are too slow and proposes to use 28,800 bits per second instead of 8,000 bits per second in the bandwidth formula.

Question 29. The Commission requests comments on the use of 28,800 bits per second in the calculation of the minimum bandwidth connection between a RIN Node and the Internet in the formula appearing in the How Report.

iv. Common Codes

The How Report does not address a standardized method of uniquely identifying transmission-owning public utilities and customers, nor does it address a standardized method of identifying facilities.

(1) Company Codes

The Commission's experience with implementing standards for file transfers and electronic bulletin boards in the natural gas industry shows that the use of a common system of identifying companies enhances the efficiency of data transfers. The Commission is satisfied with the results of using DUNS numbers[48] as the standard to uniquely identify pipelines and shippers in the natural gas transactions.[49] The Commission proposes to require the use of DUNS numbers to identify transmission-owning utilities and customers on RIN Nodes.

Question 30. The Commission requests comments on the use of DUNs numbers to identify RIN participants.

(2) Common Location Codes

The Commission's experience in the natural gas industry also demonstrates that a common method of uniquely identifying location points will be needed to facilitate movement of power across the grid. The natural gas industry uses a sophisticated system of ''smart'' codes (PI–GRID Codes), developed by the Petroleum Information Corporation. This coding system uses ''smart'' codes, which identify each transaction point by such items as state, county, latitude, longitude and type of facility.[50] Thus, the code will tell RIN users where a posted receipt, delivery point or path is

¶ 61,002 (1994); Order 563–C, Order Accepting Modifications, 68 FERC ¶ 61,362 (1994); Order 563–D, Order Accepting Modifications, 69 FERC ¶ 61,418 (1994); Order 563–E, Order Granting Clarification, 70 FERC ¶ 61,188 (1995).

[46] How Report at § 3.4.3.

[47] A bit is the smallest unit of computer data and can have a value of zero or one. A byte is eight bits and is often used to represent a character of text.

[48] DUNS numbers refer to the Data Universal Numbering System, maintained by Dun and Bradstreet.

[49] See Standardized Data Sets and Communication Protocols for Electronic Bulletin Boards in Docket No. RM93–4, Order 563(a), supra n.45, Reg. Preambles at 31,034.

[50] See Order 563(c), supra n.45, 68 FERC at 62,462–65.

located, the function it performs, and whether there are multiple facilities at that location. The Commission proposes to use a smart code system to identify location, including paths, on the electric transmission grid.

Question 31. The Commission requests comments on how to develop common location codes for the electric power industry.

v. Data Compression Standards

The How Report recommends that RINs support data compression of downloadable and uploaded files, using standard, commonly available compression applications.[51] The Commission believes that data compression will speed up the transmission of files. However, it believes communication of the RIN information would be enhanced if every RIN Node used the same compression techniques.

Question 32. The Commission requests comments on what data compression technique or techniques should be made standard for all RIN Nodes.

vi. Templates for Upload and Download Header Information

The How Report does not completely specify how to use the upload and download header templates in Phase I.[52] The templates require a series of header fields specifying such information as: (1) who is sending the data; (2) the kind of data, such as Provider Hourly Capacity Available for Purchase; (3) the column headings of the data; and (4) the number of rows of data. This header information is followed by rows of actual data. The discussion of the template does not specify delimiters between rows of data. The result would be that an entire file of Provider Hourly Capacity Available for Purchase downloaded from a RIN Node would be received as one long record. However, customers downloading data into personal computer spreadsheets may have trouble using the information since spreadsheets cannot handle very long records. To remedy the problem the Commission proposes to require, at least for Phase I, the sending RIN Node to separate each row of data with carriage return and line feed characters. Similarly, customers uploading data to a RIN node would separate each row of data with carriage return and line feed characters.

Question 33. The Commission requests comments on whether the upload and download templates are sufficiently specified to be functional and whether they are sufficiently specified to permit all RIN Nodes to implement them in the same way.

[51] How Report at § 3.3.8 (c).

[52] How Report at § 3.3.8.

c. Costs

Transmission-owning public utilities will be entitled to recover reasonable expenses associated with developing and running RINs. The costs of developing and operating the system will generally be fixed and not attributable to individual users. The Commission, therefore, proposes to roll these costs into wholesale transmission rates. The Commission also proposes to permit costs that can be identified as dependent on usage to be charged as usage fees to individual customers.

Question 34. The Commission requests comments on whether it should allow the recovery of reasonable expenses associated with developing and running RINs by rolling these costs into wholesale transmission rates. How should fees associated with RIN usage be calculated and recovered?

d. Access to RIN Information by the Public

The Commission believes that the registration procedures described in the How Report are useful security tools.[53] The Commission also believes that the Commission, state regulators, and the public should have access to transmission services information consistent with the need to maintain the security of the system.[54] The Commission, therefore, proposes that once Commission Staff and members of the general public have complied with the requisite registration procedures, they be granted ''read only'' access to RINs.

e. The Number of RIN Nodes

The How Report does not put a limit on the number of RIN Nodes, but raises the issue of how many RIN Nodes there should be.[55] Public utilities would be permitted to combine the function of their RINs into a single Node. Consequently, there could be as many Nodes as there are transmission-owning public utilities or only a very small number of Nodes. The How Group sees merit in a small number of Nodes and goes on to suggest a small number of Nodes be actively encouraged in order to minimize the networking management requirements for the RIN and to help ensure seamlessness of access. On the other hand, it recognizes that the advantages of a small number of separate Nodes must be weighed against the complexity and size that each Node would have to be to handle the correspondingly large number of transmission-owning utilities.

[53] How Report at §§ 3.2.1 (b)-(f).

[54] cf. 16 U.S.C. 824l.

[55] How Report at § 3.1.2 (f).

Question 35. The Commission requests comments on whether it should encourage a small number of RIN Nodes.

f. Connections to Third Party Networks

The How Group proposes, in Phase I, to permit transmission owning utilities to provide connections to private networks, if requested to do so. In Phase II, the How Group proposes that public utilities be required to provide these connections. It proposes that customers be required to pay the cost of the connections and the connections would be required to use the same Internet tools as are required for the Internet connections.

The Commission believes that private networks and third party services can provide valuable contributions to the successful operation of RINs. The Commission, therefore, proposes to require utilities to provide private connections in Phase I. As proposed by the How Group, the cost of the connections would be paid for by the customers making the requests and the networks would be required to use Internet tools.

Question 36. The Commission requests comments on whether transmission owning utilities should be required, in Phase I, to provide connections to private networks.

g. Unresolved Issues

The How Group was unable to resolve a number of issues. Many of them concern issues covered by the What Group and are discussed elsewhere.[56] The Commission requests comments on the following unresolved issues.

i. Price Discrimination Issues

The How Report would permit public utilities to offer value-added RIN services above the basic level of service. The Commission proposes to allow these services. However, such services would remain cost based until the Commission is satisfied that market-based (value added) rates should be allowed for such services. Requests for market-based rates for such services will be addressed, initially, on a case-by-case basis.

Some customers are concerned that price could be used to discriminate between customers if public utilities are permitted to charge for different optional services, such as higher speed connections, value-added services, and automatic notification of changed data. If public utilities charge relatively high prices for these additional services, then some customers may not be able to afford them. These customers fear, for example, that they could be effectively

[56] Supra at 40–60.

locked out of the transmission market if they could rarely get timely access to the queue for purchasing transmission access.

These customers felt that the Commission should monitor and possibly regulate the prices charged for the services to ensure that they were non-discriminatory.

ii. Transmission Services Information Timing Requirements

The How Group proposes several timing requirements for posting transmission service information and suggests that the requirements be reviewed for reasonableness, possibly during Phase I. The Commission believes that some timing requirements should be operative during Phase I.

Question 37. The Commission requests comments on whether the following How Group Proposals are adequate:

(1) Transmission Service Information Availability: The most recent Provider transmission service information, including updates reflecting power system changes, shall be available to all Customers within 5 minutes of its scheduled posting time at least 98 percent of the time. The remaining 2 percent of the time the transmission service information shall be available within 10 minutes of its scheduled posting time;

(2) Notification of Posted or Changed Transmission Service Information: Notification of transmission service information posted or changed by a Provider shall be made available within 60 seconds to all subscribed Customers who are currently connected; and

(3) Acknowledgment by the Transmission Service Information Provider: Acknowledgment by the transmission service information provider of the receipt of Customer purchase request/response requests shall occur within 1 minute for Phase I. The actual negotiations and agreements on purchase request/response requests do not have time constraints. For Phase II, acknowledgment shall occur within 30 seconds.

iii. The Posting of Capacity Available for Resale

The How Report also raises issues concerning posting of capacity to be resold.[57] The report requires the reseller to post the relevant information on the Node of the facility owner.[58]

The Commission is concerned that unless primary capacity and secondary capacity appear in the same location on the Node and require the same forms to be filled out and the same procedures followed, the capacity for sale by the facility owner will be easier to find and purchase, thereby giving the facility owner a competitive advantage. Therefore, the Commission proposes that secondary capacity be posted on the same page, using the same tables as similar capacity being sold by the facility owner.

Question 38. The Commission requests comments on how to redesign the download templates in Appendix C so that primary and secondary capacity can be offered through downloadable files that have the same format. The Commission also requests comments on how primary and secondary capacity can be displayed in the same tables on a RIN Node.

Question 39. What is the best way to handle the purchase request and response process when primary and secondary capacity appear in the same RIN displays and files?

The Commission proposes that resellers pay the costs associated with posting this information on the RIN.

Question 40. The Commission requests comments on how to determine the costs associated with posting resales on the RIN?

E. Standards of Conduct

The What Group and the How Group both focused on the specific issues that the participants at the Technical Conference agreed that they should address. Nevertheless, other important RINS-related issues must also be decided. One such issue is whether the Commission needs to promulgate generic standards of conduct for jurisdictional utilities in the electric industry akin to the ones that we promulgated for the natural gas industry,[59] or whether this issue should be decided on a case-by case basis. For the reasons explained below, we propose to address this issue on a generic basis by issuing Standards of Conduct patterned on those we promulgated for the natural gas industry.

As we stated in the RIN Notice,

> Any requirement we establish must have safeguards to ensure that public utilities owning and/or controlling transmission facilities use the same procedures and meet the same substantive requirements when they arrange transmission to support their wholesale sales and purchases as are required for third parties. Further, we expect that each public utility (or a control area operator acting as its agent) that provides transmission service must, at a minimum, give its customers electronic access in real time to information on transmission capacity availability, ancillary services, scheduling of power transfers, economic dispatch, current operating and economic conditions, system reliability, and responses to system conditions * * *
>
> This means that public utilities or their agents must give competitors and other users of the transmission system access to the same information available to the public utility personnel who trade (sell or purchase) power in the wholesale market, and at the same time. Moreover, this information cannot be declared privileged (and kept from competitors) if it is available to the company's own employees who trade wholesale power. Thus, if a utility wishes to keep this information confidential, it must assign control over this information to employees whose duties do not involve trading in wholesale power, and it must implement procedures to ensure that the traders do not get access to the information unless and until that information becomes public. The Commission invites parties to comment on the best way to implement these requirements * * *

In response to this discussion and the accompanying request for comments, the comments (in preparation for the technical conference) debated how the control room could be functionally unbundled. Currently, marketing and transmission functions are performed in the same control room and sometimes these functions are performed by the same people. However, same-time access to transmission information means that, somehow, these functions must be separated. A related matter that we are concerned about is the potential for informal communication among colleagues if utility traders have preferred access to limited access control rooms and buildings.

In discussing this issue, the commenters asked—how much separation is enough? They wondered whether the Commission would set requirements for separating marketing and transmission functions and, if so, what those requirements would be. Commenters came down on both sides of this issue. The East Texas Cooperatives and the Ohio PUC believe that separation is essential. American Electric Power points out that requiring the transmitting utility's marketing personnel to use only that transmission information posted on a RIN would be a powerful incentive for utilities to provide adequate disclosure on the RINs (or else the marketing employees couldn't properly do their jobs). El Paso Electric and Houston L&P are concerned about the reliability consequences of separating control room functions. NYSEG and Sierra Pacific do not believe

[57] How Report at § 6.6.

[58] How Report at § 3.2.4.

[59] See 18 CFR Part 161. *See also* the primary Commission orders addressing natural gas pipeline marketing affiliate regulation, and the other cases cited therein: Order No. 497, 53 FR 22,139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52,781 (December 22, 1989), III FERC Stats. & Regs. ¶ 30,868 (1989); Order Nos. 566, 59 FR 32,885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (1994); Order No. 566–A, *order on rehearing,* 59 FR 52,896 (October 20, 1994), 69 FERC ¶ 61,044 (1994); Order No. 566–B, *order on rehearing,* 59 FR 65,707 (December 21, 1994), 69 FERC ¶ 61,334 (1994); *appeal docketed,* Conoco, Inc. v. FERC, D.C. Cir. No. 94–1745 (December 13, 1994).

that separating control room functions is needed.

Additionally, this issue was renewed by the power marketers, in the discussion of non-consensus issues in the What Report and in separate comments, where they argued that a lack of organizational separation and the absence of formal standards of conduct similar to those the Commission imposed on natural gas pipelines undermines their confidence in functional unbundling and the RIN. In the absence of such standards, the marketers request that voluminous supplemental information about transactions be posted on the RINs.

To help ensure non-discriminatory access to information, the Commission believes it is appropriate to impose standards of conduct for Transmission Providers. Therefore, we are proposing standards that would require Transmission Providers to separate their wholesale merchant functions (*i.e.,* purchases or sales for resale of electric energy in interstate commerce) from their wholesale transmission system operations and reliability functions, and that would further require employees performing merchant functions to obtain access to information on wholesale transmission services through the RIN, on the same basis available to all other RIN users.

In deciding this issue, we have been influenced by the differing views expressed by interested persons as to what conduct should be deemed proper or improper, our experience in the gas industry, and the generic nature of these issues. We have concluded that the industry needs explicit guidelines on separating transmission and power trading functions. In formulating proposed standards of conduct, our goal is to prevent employees of the Transmission Provider that perform merchant functions from having *preferential* access to any relevant information about the Transmission Provider's wholesale transmission availability and costs. In other words, those employees should not have access to any relevant information that is not also available to all wholesale transmission customers and potential wholesale transmission customers, regardless of whether this information is obtained through access to the control center, access to other locations or files, or through informal communications.

Question 41. Are the standards of conduct proposed herein sufficient? Should they be modified in any way?

Question 42. In particular, if the Commission in its final rule requires functional unbundling of all transmission from generation, how would these standards of conduct need to be modified? Would any other organizational changes need to be made? Would any modifications be needed with regard to ancillary services?

We note that, although formal rules prescribing standards of conduct were deemed necessary in the natural gas industry, the potential for improper communications between transmission and trading personnel is even more of a concern for electric utilities than for gas pipelines. Absent divestiture, transmission and power trading jobs will be performed by individuals working for the same company (or corporate group). These tasks have traditionally been done in the same control room and, in some cases, are now being performed by the same person.

We believe that explicit guidance would be helpful to all concerned. Transmission Providers will have a better idea of what conduct is permissible and what is impermissible. Customer complaints on preferential access should be minimized. Enforcement efforts by the Commission will be easier when specific guidelines are available. Additionally, to the extent this standard of conduct allays concerns about improper conduct, it could reduce what information needs to be posted on the RIN.

In the event that Transmission Providers are concerned that this proposal somehow will impede system reliability, we invite them to articulate their concerns in their comments by addressing the question below.

Question 43. Would the Commission's proposed separation of functions jeopardize system reliability? If so, what other mechanism would provide wholesale transmission customers and potential customers with assurance that they would be obtaining access to the same information, at the same time, as that used by transmission providers in making their own wholesale transmission purchasing decisions?

F. Applicability

1. Non-Public Utility Transmission Providers

As with the requirements in the Open Access NOPR, the RINs requirement applies only to public utilities. Issues relating to potential gaps in the provision of comparable open access to wholesale transmission services or access to transmission information due to the fact that the requirements do not apply to non-public utilities will be addressed in the Open Access rulemaking proceeding. Although the RINs requirements would not apply to non-public utilities, the Commission expects non-public utilities to provide comparable access to wholesale transmission information under the reciprocity provision in the Open Access rule *pro forma* tariffs.

In this regard, we also note our general authority under section 311 of the Federal Power Act, 16 USC § 825j (1994), to secure information (and conduct appropriate investigations) concerning, among other things, the transmission of electric energy throughout the United States, regardless of whether such transmission is otherwise subject to our jurisdiction.

Question 45. The Commission requests comments on whether and to what extent the Commission should exercise this statutory authority to extend the RINs requirements to non-public utilities that own and/or control facilities used for the transmission of electric energy in interstate commerce.

Question 46. Should reciprocity require that a non-public utility (such as a co-op or publicly-owned utility) have a RIN?

2. Public Utilities Having No Transmission Facilities With Commercial Value

Some public utilities claim that none of their transmission facilities that could be used to provide wholesale service has commercial value that would justify the burden and expense of developing and maintaining a RIN. Although the Commission would still require same-time access to wholesale transmission and ancillary service information, simpler means of satisfying this requirement may be considered for utilities with wholesale transmission of little commercial value.

Question 47. In light of the proposal in the How Report to use a low cost Internet-based approach, the Commission requests specific comments on circumstances in which the RINs requirements are believed to be an unnecessary burden. Are there less burdensome ways to meet the same-time access requirement in circumstances where the utility's wholesale transmission facilities have little commercial value? What criteria should the Commission use in determining whether and when to relax the RINs requirements?

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA),[60] requires the Commission to describe the impact a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The entities that would have to comply with the proposed rule are public utilities and transmitting utilities that do not fall within RFA's definition of

[60] 5 U.S.C. 601–612.

small entities.[61] Therefore, under section 605(b) of RFA, the Commission hereby certifies that this proposed rule will not, if promulgated, have a significant economic impact on small entities within the meaning of RFA. Accordingly, no regulatory flexibility analysis is required pursuant to section 603 of RFA.

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.[62] Although this regulation does not directly affect any physical transmission facilities, but merely proposes the electronic posting by computers of certain information about transmission availability and prices, it nevertheless is being covered by the environmental impact statement being prepared in the Open Access NOPR proceeding in Docket Nos. RM95–8–000 and RM94–7–001. Thus, no separate environmental assessment or environmental impact statement is being prepared for this proposed rule.

VI. Information Collection Statement

There are approximately 328 public utilities, including marketers and wholesale generation entities. The Commission estimates that approximately 166 of these utilities own and/or control facilities used for the transmission of electric energy in interstate commerce and thus are subject to this proposal. However, since the operation of a RIN will be closely associated with control areas, we assume that RINs will be developed at the control area level and not by each public utility that owns and/or controls interstate transmission facilities. We estimate, therefore, that 84 respondents will be required to collect information. We believe that this estimate is conservative because some regions are likely to develop a region-wide RIN that will cover more than one control area.

Information Collection Statement

Title: FERC–717, Real-Time Information Network Standards.

Action: Proposed Collection.

OMB Control No: None.

Respondents: Business or other for profit, including small business.

Frequency of Responses: On Occasion.

Necessity of the information: The Notice of Proposed rulemaking solicits public comments to respond to the uniform requirements for a Real-time information network (RIN) established by the Commission to ensure simultaneous access to information on transmission service. The proposed requirements were developed after technical conferences with industry to ensure that safeguards are installed to provide procedures and substantive requirements for all parties seeking transmission service. These requirements would support arrangements made for wholesale sales and purchases for third parties. Public utilities and/or their agents would give competitors and other users of the transmission system access to same information available to the public utility personnel who initiate the acquisition or disposition of power in the wholesale market and at the same time. The Commission would use the information to monitor the networks to ensure that potential purchasers of transmission services obtain the services on a non-discriminatory basis.

The Office of Management and Budget's (OMB) regulations,[63] require OMB to approve certain information collection requirements imposed by agency rule. The information collection requirements in the proposed rule will be reported directly to transmission users and will be subject to subsequent audit by the Commission. The distribution of these data will help the Commission carry out its responsibilities under Part II of the FPA.

The Commission is submitting notification of this proposed rule to OMB. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention Michael Miller, Information Services Division, (202) 208–1415], and to the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission (202) 395–3087].

VII. Public Comment Procedure

This NOPR gives notice of our intention to add Part 37 to the Commission's Regulations. As described in the discussion above, under this proposal each Transmission Provider would be required to create and participate in a RIN, to ensure that potential purchasers of transmission services have access to information to enable them to obtain open access transmission services on a non-discriminatory basis from the Transmission Provider. Additionally, the proposal would require public utilities to comply with standards of conduct designed to prevent discriminatory practices and affiliate abuse.

Prior to taking final action on this proposed rulemaking, we are inviting comments from interested persons on 47 specific questions enumerated in the body of this order (and compiled in Attachment ''1''), on the proposed templates in Appendix ''C'' and, more generally, on whether the Commission should proceed to promulgate this proposal as a final rule. Additionally, the Commission invites comments on any suggested changes or modifications to the proposal that would, in the view of the commenter, improve the proposal, and if so, why. Moreover, the Commission is not intending to allow the filing of reply comments in this proceeding and, therefore, we also invite parties to discuss why policy options advocated by other parties (as described in the comments in preparation for the Technical Conference, the working group reports, and in comments in response to the working group reports), should not be adopted by the Commission.

The Commission invites interested persons to submit written comments or other information concerning this proposed rulemaking and the issues identified above. All comments in response to this notice should be submitted to the Office of Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. RM95–9–000. An original and fourteen (14) copies of such comments should be filed with the Commission on or before [insert date 45 days from the date of publication in the Federal Register]. Additionally, a copy of the comments also should be submitted to the Commission on computer diskette in Wordperfect 5.1 or ASCII format.

All written submissions to this NOPR will be placed in the public file and will be available for public inspection in the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 37

Real-Time Information Networks.

By direction of the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Title

[61] *See* 5 U.S.C. 601(3) and 601(6) and 15 U.S.C. 632(a).

[62] Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987); 1986–90 Regs. Preambles FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987) (*codified at* 18 CFR Part 380).

[63] 5 CFR 1320.11.

18, *Code of Federal Regulations,* to add a new Part 37, as set forth below.

PART 37—REAL-TIME INFORMATION NETWORKS AND STANDARDS OF CONDUCT FOR PUBLIC UTILITIES

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

§ 37.1 Applicability.

This part applies to any public utility that owns and/or controls facilities used for the transmission of electric energy in interstate commerce.

§ 37.2 Purpose.

The purpose of this part is to ensure that potential customers of transmission service receive access to information that will enable them to obtain open access transmission service on a non-discriminatory basis from public utilities that own and/or control facilities used for the transmission of wholesale electric energy in interstate commerce. These rules require public utilities (or their agents) to create and operate a real-time information network (RIN) that gives competitors and other users of the transmission system access to the same information available to the public utility personnel who trade (sell or purchase) power in the wholesale market, and at the same time, so that potential customers may obtain open access transmission service that is comparable to that provided by transmission owning public utilities to themselves.

§ 37.3 Definitions.

(a) *Transmission Provider* means any public utility that owns and/or controls facilities used for the transmission of electric energy in interstate commerce.

(b) *Transmission Customer* means any eligible customer (or its designated agent) that executes a service agreement and/or receives transmission service.

(c) *Responsible Party* means the Transmission Provider or a third party to whom the Transmission Provider has delegated the responsibility of meeting the requirements of this Part.

(d) *Resellers* means Transmission Customers who offer to sell transmission capability they have purchased to other Transmission Customers.

(e) *Wholesale Merchant Function* means the sale for resale or purchase of electric energy in interstate commerce.

(f) *Affiliate* means:

(1) for any non-exempt wholesale generator public utility, another person which controls, is controlled by, or is under common control with such person;

(2) for any public utility that is an exempt wholesale generator, as defined in section 2(a)(11) of the Public Utility Holding Company Act of 1935, as amended.

§ 37.4 Standardization of data sets and communication protocols.

(a) A public utility subject to this Part must provide access on a RIN to standardized information relevant to the availability of transmission capability, prices, and other information (as described elsewhere in this Part) pertaining to its transmission system; it must also provide the ability to display, download and upload the standardized information in compliance with standardized procedures and protocols.

(b) The standardized information, procedures and protocols are found in ''Standardized Data Sets and Communication Protocols,'' which can be obtained from the Office of Public Information, Federal Energy Regulatory Commission, 888 North Capitol Street NE, Washington, DC 20426.

§ 37.5 Obligations of Transmission Providers.

Each Transmission Provider is required to provide for the operation of a RIN, either individually or jointly with other Transmission Providers, in accordance with the requirements of this Part.

§ 37.6 Standards of conduct.

A public utility subject to this Part must conduct its business to conform with the following standards:

(a) The employees of the public utility that are engaged in wholesale merchant functions (*i.e.,* wholesale purchases and sales for resale of electric energy in interstate commerce) are prohibited from also conducting transmission system operations and/or reliability functions. The employees of the public utility that are engaged in merchant functions also are prohibited from having preferential access to the system control center and other facilities of the public utility that differs from the access available to other wholesale transmission customers or potential wholesale transmission customers. To the maximum extent practicable, the employees of the public utility engaged in transmission system operations must function independently of the employees engaged in wholesale merchant functions and of the employees of any affiliate of the public utility. Employees are not precluded from transferring between departments as long as they do not conduct both transmission system operations functions and wholesale merchant functions or functions on behalf of any affiliate, and as long as these standards of conduct are observed. Notices of any employee transfers to or from transmission system operations must be posted on the RIN.

(b) When buying or selling power, employees of the public utility that are engaged in wholesale merchant functions and employees of any affiliate of the public utility must rely upon the same information relied upon by the public utility's wholesale transmission customers (*i.e.,* the information posted on the RIN), and must not have preferential access to any information about the public utility's transmission system that is not available to all users of the RIN.

(c) Employees of the public utility that are engaged in wholesale merchant functions and employees of any affiliate of the public utility are prohibited from obtaining information about the public utility's transmission system (including information about available transmission capability, price, curtailments, ancillary services, etc.) through communications conducted off the RIN or through access to information not posted on the RIN.

(d) Employees of the public utility that are engaged in transmission system operations or reliability functions may not disclose to employees engaged in the wholesale merchant function or to employees of any affiliate of the public utility any information concerning the public utility's transmission system (including information received from non-affiliates or information about available transmission capability, price, curtailments, ancillary services, etc.) through communications conducted off the RIN or through access to information not posted on the RIN.

(e) If a public utility employee that is engaged in transmission system

operations or reliability functions provides information not contained on the RIN to an employee of the public utility that is engaged in the merchant function or to an employee of an affiliate of the public utility, the public utility must immediately post such information on the RIN.

(f)(1) The employees of the public utility that are engaged in transmission system operations must apply all tariff provisions relating to the sale or purchase of wholesale transmission service in a fair and impartial manner that treats all customers (including the public utility's employees conducting wholesale merchant functions and employees of any affiliate) alike, if these provisions involve discretion.

(2) The public utility must keep a log, available for after-the-fact Commission audit, detailing the circumstances and manner in which it exercised its discretion under any terms of the tariff.

(g) The employees of the public utility that are engaged in transmission system operations must strictly enforce all tariff provisions relating to the sale or purchase of wholesale transmission service, if these provisions do not provide for the use of discretion.

(h) The public utility may not, through its tariffs or otherwise, give preference to wholesale purchases or sales made for itself or any affiliate over the interests of any other wholesale customer in matters relating to the sale or purchase of transmission service (including issues of price, curtailments, scheduling, priority, etc.).

(i) If the public utility offers discounts to purchases made for itself or for any affiliate, then it must, at the same time, offer on the RIN comparable discounts for similar service to all transmission customers.

(j) A public utility must maintain its books of account and records separately from those of its affiliates.

(k) Within 60 days of publication of the final rule in the Federal Register, the public utility must file with the Commission procedures that will enable customers and the Commission to determine that the public utility is in compliance with the requirements in this section.

§ 37.7 RIN uses.

The information posted on the RIN must allow transmission customers to:

(a) make requests for transmission services offered by Transmission Providers and the secondary market;

(b) view and download in standard formats, using standard protocols, necessary information regarding the transmission system to enable prudent business decision making;

(c) post, view, upload and download information regarding available products and desired services;

(d) clearly identify the degree to which their transmission service requests and/or schedules were denied or curtailed relative to those of their competitors; and

(e) obtain access in electronic format information to support available transmission capability calculations and historical transmission service requests and schedules for various audit purposes.

§ 37.8 Information requirements for transmission service.

(a) The RIN must support the posting of available transmission capability and the processing of requests electronically.

(b) The RIN must provide a mechanism to enable Transmission Providers and Customers to promptly communicate requests and responses to buy and sell available transmission capability offered under the Transmission Providers' tariffs.

(c) For requests for transmission service to begin more than one year from the date of the request, transmission studies need not be performed to calculate ATCs, *see* § 37.9(a)(1), until a request for service is made. However, any planning or specifically requested studies of the transmission network performed by the Transmission Provider are to be available for download on the RIN. (This applies only to those parts of customer-specific interconnection studies that relate to network impacts).

§ 37.9 Information to be posted on a RIN.

(a) Five major types of information must be posted on the RIN: (1) Available Transfer Capability (ATC) and Total Transfer Capability (TTC);

(2) Transmission Providers' and Resellers' Transmission Service Product Offerings and Prices;

(3) Transmission Providers' and Third Parties' Ancillary Service Product Offerings and Prices;

(4) Specific Transmission Service Requests/Responses; and

(5) Informal Transmission Communications.

(b) Information on ATC and TTC shall be posted on the RIN in accordance with the following: (1) The Transmission Provider must inform all participants simultaneously in the wholesale market of the transfer capability that is expected to be available on transmission paths of the Transmission Provider's system and each paths' total transfer capability. The Transmission Provider may delegate this responsibility to a suitable third party who maintains that Transmission Providers' RIN, such as an Independent System Operator, a Regional Transmission Group, or a Regional Reliability Council.

(2) The ATC/TTC shall be calculated by the Responsible Party (the Transmission Provider or its designated agent) according to consistently applied industry practices, standards and criteria, or criteria referenced in the Transmission Provider's transmission tariff.

(3) The amount of ATC posted shall be that amount that the Responsible Party expects, in good faith, to be available on a specific interface or Path in a specific direction, based on engineering analysis and other information that is available to the Responsible Party at the time of the posting. ATCs and TTCs as required in the Posting Schedule must be posted in megawatts.

(4) Curtailment provisions associated with ATC must be incorporated in the posting and must be made available to all Transmission Customers.

(5) Transmission tariffs provide an application procedure for Transmission Customers to request transmission service. At the time of the application, and in accordance with the provisions of those tariffs, the Transmission Provider (or its designated agent) must inform the requester if the Transmission Provider can honor the request. If not, the Transmission Provider must provide an explanation of additional information that is needed to evaluate the request, or identify prior pending requests that prevent acceptance of the full request, regardless of the posted ATC/TTC values.

(6) The public utility must make all data used to calculate ATC/TTC publicly available. This information must be available for download on the RIN. The Transmission Provider must identify in its information supporting its ATC calculations the limiting element and the cause of the limit (*e.g.*, thermal, voltage, stability). Whatever method is used to determine capability must be applied consistently.

(c) Information on Transmission Providers' and Resellers' Transmission Service Product Offerings and Prices must be posted on the RIN in accordance with the following: (1) Transmission Providers and Resellers must post the prices, terms and conditions associated with the transmission products that they offer to Transmission Customers. Transmission Providers must also provide a downloadable file of their complete tariff in the format required in the Open Access rule.

(2) Customers who desire to resell capability must post the relevant information to the same RIN node used by the primary provider from whom the customer purchased the transmission capability.

(3) If the Transmission Customer resells its rights, in whole or in part, it must promptly notify the Transmission Provider, or the Transmission Provider's agent, of the new owner of the rights, any subdivision of these rights that may have occurred, and any changes in the terms and conditions of these rights, subject to the terms and conditions of the tariff.

(d) Information on Transmission Providers' and Third Parties' Ancillary Service Product Offerings and Prices must be posted on the RIN in accordance with the following: (1) To the extent that the final Open Access rule requires that a Transmission Provider offer ancillary services, the Transmission Provider will post such offers on the RIN.

(2) Other entities offering the same ancillary services shall have a comparable right to post offers on the RIN.

(e) All requests for transmission service must be made on the RIN. Requests for transmission service and the responses to such requests must be consistent with the Transmission Provider's tariff, the Federal Power Act, and FERC regulations.

(f) RINs must permit the posting of informal communications related to transmission services. Postings made in this section carry no obligation to respond on the part of any market participant. These communications include ''want ads'' and ''other communications'' (including using the RIN as a conference space or to provide messaging services between RIN users).

§ 37.10 Posting and Updating Information on the RIN.

(a) Information about ATC/TTC posted on the RIN must be updated when transactions are scheduled or end or as other system conditions change that significantly affect TTC/ATC.

(b) Information must be posted in accordance with the following procedures:

(1) All information will be date/time stamped;

(2) Firm (Non-Recallable) ATC/TTC must be posted:

(i) 24 hours per day for the next seven days, updating the next six days and adding day seven at a reasonable pre-specified time daily;

(ii) On-peak and off-peak each day, for days 8–30, updating the next 29 days and adding day 30 at a reasonable pre-specified time daily;

(iii) By month, both on and off peak, for next 12 months updating the next 11 months and adding month 12 on the 15th of each month;

(iv) Seasonal, by year, for years 1–10 (when planning and specially requested transmission planning studies have been done).

(3) Non-Firm (Recallable) ATC/TTC must be posted:

(i) 24 hours per day for the next seven days, updating the next six days and adding day seven at a reasonable pre-specified time daily;

(ii) On-peak and off-peak each day, for days 8–30, updating the next 29 days and adding day 30 at a reasonable pre-specified time daily;

(iii) Longer term by request.

(4) Daily updates must be posted at the same universal time for each RIN.

§ 37.11 Posting of discounts.

A public utility, within 24 hours of agreeing to a discount (as measured from when ATC must be adjusted in response to the transaction), must post on the RIN and make available for download, information describing the transaction (including price, quantity, and any other relevant terms and conditions) and shall keep such information posted on the RIN for at least 30 days. Thereafter, records of the transaction must be retained and kept available for after-the-fact Commission audit as part of the audit log required in section 37.14(e).

§ 37.12 Procedure for transmission providers to respond to customer requests for transmission service.

The following steps must be followed in processing a transmission service request, with the time for each step specified in the service tariff:

(a) Requester: Submits request, including all information, as required by the tariff.

(b) Provider: Places request in queue and posts applicable information to the RIN. Posts request status and provides time/date stamps throughout the process.

(c) Provider: Approves or denies request and provides reason, if denied. Posts result to the RIN. Tenders service offer.

(d) Requester: Accepts service or withdraws request.

(e) Provider: If service accepted by Customer, adjusts ATC on the RIN.

(f) Requester: Holds for scheduling, arranges scheduling, or arranges for resale.

§ 37.13 Communicating denials of requests for service and curtailments.

When requests for service are denied or transactions are curtailed, the RIN must provide a mechanism for Transmission Providers to communicate to transmission customers:

(a) the reason those transactions could not be accommodated; and

(b) the options, if any, for adjusting operation of the system to increase transfer capability in order to accommodate those transactions.

§ 37.14 Auditing Transmission Service Information.

(a) All RIN database transactions must be automatically copied, recorded in a log file, and date/time stamped. If there is a question concerning a transmission transaction, the log file may be downloaded to identify the sequence of events concerning the transaction.

(b) Information on scheduling transmission service must be recorded in a log file by the entity scheduling the transmission service and must be available for download on the RIN by interested parties.

(c) Transmission Service Schedules must be posted to the RIN within one week of the start of the transmission service schedule agreed upon by the parties, unless otherwise reasonably requested by a party with a legitimate concern.

(d) With the exception of discounted prices to its merchant functions or to its affiliates, information about negotiations for transmission do not have to be posted on the RIN unless an agreement for transmission is reached. If an agreement is reached, the identity of the parties, to a transmission transaction may be masked for 30 days from the date when the transaction was agreed upon by the parties.

(e) Audit logs must be available for download on RINs for 90 days and retained and available upon request for three years from the date when they are first posted on a RIN.

§ 37.15 Implementation schedule for RIN requirements; phases.

The RIN(s) established under this part may be constructed in phases, with the initial phase consisting of core requirements and later phases increasing the number of functions, efficiency, and/or effectiveness of the RIN. The first phase requirements must be implemented as of the effective date of the Open Access rule.

Note: The following attachment will not appear in the Code of Federal Regulations.

Attachment 1—(Questions for Comment)

Question 1. We seek comment on whether to continue to call the information network

a ''RIN'' and, if not, what name should be used in its place.

Question 2. What issues associated with RIN standards would have to be addressed if in an open access transmission environment the electric power industry transitions to regional pricing, flow-based pricing, or other pricing models that depart from the ''contract path'' approach presently used for pricing electric transmission service? How in structuring RIN standards can the Commission provide for this contingency?

Question 3. The Commission requests comments on how best to post the availability of network transmission service on the RIN. Should Transmission Providers be required to post conservative estimates as a preliminary matter that could be improved with additional study? Is there an alternative service concept that is more suitable to measurement than the current version of network service?

Question 4. The Commission requests comment on how to develop a consistent, industry-wide method of calculating ATC/TTC.

Question 5. The Commission requests comments on ways to minimize the burden of ATC calculations, while ensuring that wholesale transmission customers have the information they need.

Question 6. The Commission requests comment on a standard format for electronic submission of transmission tariffs to the Commission.

Question 7. The Commission requests comments on what information about curtailments and denials of requests for service should be communicated on a RIN.

Question 8. What specifications would be needed for information about curtailments and denials of requests for service to be posted in HTML displays and what specifications and formats would be needed to standardize downloadable files?

Question 9. The Commission requests comment on where on the RIN offers by other entities to provide ancillary service should be placed. The What Report states that these offers should be posted in the ''Informal Transmission Communications'' section of the RIN. Would this place third party providers at a disadvantage relative to the Transmission Provider?

Question 10. The Commission requests comments on how to determine the costs associated with posting ancillary services on the RIN.

Question 11. With regard to information about offers to provide ancillary services provided by an entity other than the Transmission Provider, what specifications would be needed for this information to be posted in HTML displays and what specifications and formats would be needed to standardize downloadable files?

Question 12. The Commission requests comment on whether there is any additional information needed about ancillary services that is not included in the list. Is any information on the list not needed?

Question 13. The Commission requests comment on how often ancillary services information should be updated.

Question 14. The Commission seeks comment on whether all transmission discounts should be posted on the RIN, or only those provided to the Transmission Provider or its affiliates. Also, if discounts are to be posted, when should this be done?

Question 15. Regarding information on affiliate discounts, what specifications are needed for the information to be posted in HTML displays and what specifications and formats are needed for the downloadable files?

Question 16. The Commission requests comments on how the data used in calculating ATC should be formatted. Should it be in free form text, predefined tables, or comma delimited ASCII files? If in free form text, should it be in plain ASCII text or in a word processor format, such as WordPerfect or Word?

Question 17. The Commission requests comments on what is the appropriate time delay for making supporting information on ATC available. Should the Commission require specific formats for ATC supporting data? If so, what should the formats be?

Question 18. To keep the amount of information on the RIN manageable, the Commission requests comment on whether it is sufficient to provide information only about planned outages and return dates (for both planned and forced outages) for those system elements deemed to have a direct and significant impact on ATC and whether posting this information on the RIN would cause any confidentiality concerns.

Question 19. Since many system elements can impact the ATC of a path, how should ''significant and direct impact'' be defined? Is it acceptable to limit the additional information to those system elements for which nomograms, derating tables, and operating guides have been developed?

Question 20. Are there any difficulties, technical or otherwise, associated with posting actual path flows on the RIN?

Question 21. In cases where ATC of a path is a function of run status of one or more generators, is it sufficient to post the expected amount and date of changes to ATC on the RIN, corresponding to the planned outage or return dates of generators.

Question 22. If operating guides, nomograms, operating studies, and similar information are to be made available on the RIN for download, would it be logical to expect that transmission customers will be able to deduce the run status of those generators which significantly and directly impact ATC by observing the changes to ATC?

Question 23. The Commission requests comments on how transmission studies should be formatted for download from the RIN. Should they be in free form ASCII text, or in a word processor format, such as WordPerfect or Word?

Question 24. The Commission requests comment on what information should be considered commercially sensitive, the 30-day release period proposal, and on how and when commercially sensitive information should be released to concerned parties before the standard release period? Should affiliated transactions be treated differently?

Question 25. The Commission requests comments on how long the implementation schedule should be for Phase I.

Question 26. Does the How Report define HTML displays and downloadable files with sufficient clarity to permit public utilities to implement Phase I such that the downloaded files and HTML displays received by customers from each RIN have the same definitions, etc.? If not, what clarifications are needed? Similarly, are uploaded files sufficiently defined in the How Report?

Question 27. The Commission invites comment generally, on the issues discussed in Appendix ''C''.

Question 28. The Commission requests comments on how to ensure that a customer will be able to choose a browser and use it to access all RIN Nodes.

Question 29. The Commission requests comments on the use of 28,800 bits per second in the calculation of the minimum bandwidth connection between a RIN Node and the Internet in the formula appearing in the How Report.

Question 30. The Commission requests comments on the use of DUNs numbers to identify RIN participants.

Question 31. The Commission requests comments on how to develop common location codes for the electric power industry.

Question 32. The Commission requests comments on what data compression technique or techniques should be made standard for all RIN Nodes.

Question 33. The Commission requests comments on whether the upload and download templates are sufficiently specified to be functional and whether they are sufficiently specified to permit all RIN Nodes to implement them in the same way.

Question 34. The Commission requests comments on whether it should allow the recovery of reasonable expenses associated with developing and running RINs by rolling these costs into wholesale transmission rates. How should fees associated with RIN usage be calculated and recovered?

Question 35. The Commission requests comments on whether it should encourage a small number of RIN Nodes.

Question 36. The Commission requests comments on whether transmission owning utilities should be required, in Phase I, to provide connections to private networks.

Question 37. The Commission requests comments on whether the following How Group Proposals are adequate:

(1) Transmission Service Information Availability: The most recent Provider transmission service information, including updates reflecting power system changes, shall be available to all Customers within 5 minutes of its scheduled posting time at least 98 percent of the time. The remaining 2 percent of the time the transmission service information shall be available within 10 minutes of its scheduled posting time;

(2) Notification of Posted or Changed Transmission Service Information: Notification of transmission service information posted or changed by a Provider shall be made available within 60 seconds to all subscribed Customers who are currently connected; and

(3) Acknowledgment by the Transmission Service Information Provider: Acknowledgment by the transmission service

information provider of the receipt of Customer purchase request/response requests shall occur within 1 minute for Phase I. The actual negotiations and agreements on purchase request/response requests do not have time constraints. For Phase II, acknowledgment shall occur within 30 seconds.

Question 38. The Commission requests comments on how to redesign the download templates in Appeat primary and secondary capacity can be offered through downloadable files that have the same format. The Commission also requests comments on how primary and secondary capacity can be displayed in the same tables on a RIN Node.

Question 39. What is the best way to handle the purchase request and response process when primary and secondary capacity appear in the same RIN displays and files?

Question 40. The Commission requests comments on how to determine the costs associated with posting resales on the RIN?

Question 41. Are the standards of conduct proposed herein sufficient? Should they be modified in any way?

Question 42. In particular, if the Commission in its final rule requires functional unbundling of all transmission from generation, how would these standards of conduct need to be modified? Would any other organizational changes need to be made? Would any modifications be needed with regard to ancillary services?

Question 43. Would the Commission's proposed separation of functions jeopardize system reliability? If so, what other mechanism would provide wholesale transmission customers and potential customers with assurance that they would be obtaining access to the same information, at the same time, as that used by Transmission Providers in making their own wholesale transmission purchasing decisions?

Question 44. Regarding information on affiliate discounts, what specifications are needed for the information to be posted in HTML displays and what specifications and formats are needed for the downloadable files?

Question 45. The Commission requests comments on whether and to what extent the Commission should exercise this statutory authority to extend the RINs requirements to non-public utilities' that own and/or control facilities used for the transmission of electric energy in interstate commerce.

Question 46. Should reciprocity require that a non-public utility (such as a co-op or publicly owned utility) have a RIN?

Question 47. In light of the proposal in the How Report to use a low cost Internet-based approach, the Commission requests specific comments on circumstances in which the RINs requirements are believed to be an unnecessary burden. Are there less burdensome ways to meet the same-time access requirement in circumstances where the utility's wholesale transmission facilities have little commercial value? What criteria should the Commission use in determining whether and when to relax the RINs requirements?

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RAILROAD RETIREMENT BOARD

20 CFR Part 261

RIN 3220–AB15

Finality of Decisions Regarding Railroad Retirement Annuities

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to adopt regulations pertaining to the finality of decisions under the Railroad Retirement Act of 1974 (Act).

DATES: Comments must be received on or before February 20, 1996.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, General Attorney, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone (312) 751–4929, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The Board's rules and procedures regarding the finality of decisions are presently contained in Board Orders, which are not readily available to the public. The Board Order regarding finality of decisions provides that finality of certain decisions is based on a number of factors; adjudication based on these factors is difficult to administer. Also the Board Order does not contain any time limits on reopening.

The proposed regulation addresses the finality of benefit decisions. This proposed rule is similar to the regulation of the Social Security Administration (SSA) entitled ''Reopening and Revising Determinations and Decisions'' (20 CFR 404.987–404.996).

Proposed § 261.1 describes who may open a final decision issued by the agency. Proposed § 261.2 describes when a final decision may be reopened. All final decisions, except decisions awarding separation allowance lump sum payments, may be reopened within 12 months of the date of notice of such decision; within 3 years of the date of notice if new and material evidence is furnished or if there was an adjudicative error not consistent with the evidence of record at the time of adjudication; or at any time under the conditions set forth in proposed § 261.2(c).

Proposed § 261.3 provides that a change of legal interpretation or administrative ruling upon which a decision was based is not a basis for reopening.

Proposed § 261.4 provides that the annuity beginning date will not be changed if the annuitant was later found to be engaged in compensated service for an employer, as defined in part 202 of the Board's regulations, and the annuitant had no basis for knowing that he was engaged in such service. This section also provides that the award of an annuity would not be withdrawn if based upon incorrect records of service where the erroneously credited service months do not exceed 6 months and the annuitant was not at fault in causing the error.

Proposed § 261.5 provides that a decision may be reopened after the 1 year and 3 year time limits set forth in § 261.2 of this part if the Board had begun an investigation within those time limits. However, if the Board does not diligently pursue the investigation it will not reopen the decision if the decision was favorable to the annuitant.

Proposed §§ 261.6–261.8 are procedural and provide that if a decision is reopened, the annuitant will be given notice and will have a right to reconsideration and/or a hearing. Any hearing shall be conducted in accordance with part 260 of the Board's regulations (20 CFR part 260).

Proposed § 261.9 provides that if a decision on a claim is reopened it may also cause a reopening of a decision on a previous claim based upon the same compensation record, even though the time limits for reopening a decision on the first claim have passed.

Proposed § 261.10 provides that where new evidence shows that the date of birth used in the initial decision was incorrect or where the record of compensation has been changed a decision may be revised even beyond the time limits of § 261.2 of this part if such reopening is favorable to the annuitant, but any increase in benefits payable as the result of the reopening shall be paid prospectively only.

Finally, proposed § 261.11 provides that the three-member Board has the discretion to reopen or not to reopen any decision under these regulations.

The Labor Member of the Board dissented from the action of the majority of the Board approving this proposed rule. The Labor Member's reasons for dissenting from this action are set out below.